

City of Sonora

Request for Qualifications

On-Call

Professional Engineering Services



Friday, September 22, 2023

Issued by:

City of Sonora
Community Development Department
94 N. Washington Street
Sonora, CA 95370
(209)532-3508 Ext. #2

August 18, 2023

Contents

- Section I - Purpose
- Section II – General Information
- Section III – Scope of Work
- Section IV - Request for Qualifications/Proposals
- Section V – Selection Criteria and Process
- Section VI - Contract Process
- Section VII – General Conditions

Attachments

- EXHIBIT A
 - Consultant Services Agreement (Including LAPM Exhibit 10-R, A&E Boilerplate Agreement Language)
- EXHIBIT B –
 - Cost Proposal
 - Sample Cost Proposal
 - Cost Proposal Contracts with Prevailing Wage – Loaded Rate Calculation
- EXHIBIT C
 - Proposal Attachments & DBE Forms
 - California Levine Act Statement
 - Notice to Proposer DBE Information (Exhibit 10-I)
 - Consultant Proposal DBE Commitment (Exhibit 10-1)
 - Consultant Contract DBE Information (Exhibit 10-02)
 - DBE Information – Good Faith Effort (Exhibit 15-H)
 - Final Report – Utilization of DBEs (Exhibit 17-F1)
 - Disclosure of Lobbying Activities (Exhibit 10-Q)
 - Consultant in Management Support Role, Conflict of Interest and Confidentiality Statement (Exhibit 10-U)
 - Individual A&E Task Order DBE Tracking Sheet (Exhibit 10-G)

I. PURPOSE

By way of this Request for Qualifications (RFQ) the City of Sonora (City) is seeking a qualified firm to serve in the capacity of City Engineer and provide ongoing professional engineering services on an on-call basis. The City intends to select one engineering firm (Consultant) to provide these services. The selected firm should be experienced with all types of public works projects and be able to provide a variety of engineering services including plan development and design, construction oversight and management, inspections, engineered plan review, subdivision and parcel map review, capital improvement plan development and implementation, grant preparation and implementation, and other services as may be required in serving in the capacity as the City Engineer.

The Contract for Services will have an initial term of three (3) years and provide for two one-year options to extend the contract, the contract term shall not exceed five (5) years. The maximum aggregate value of all tasks under the agreement is \$10,200,000.

The selected Consultant must be familiar with all pertinent local, State, and Federal funding sources along with their associated laws, regulations, requirements, standards, policies, procedures, and manuals. This includes compliance with State Highway Administration and Federal Highway Administration requirements. For services that involve the use of Federal Funds, all applicable Federal requirements shall apply, and all consultants must consent to each certification and assurance which will be incorporated into the agreement.

Consultant will serve in a "Management Support Role" acting on the City's behalf to perform engineering management services or other services that are typically performed by the local agency as defined by 23 CFR 172.7(b)(5). The City reserves the right to investigate the qualifications of all firms and persons under consideration including reference checks to confirm any part of the information furnished by the Consultant.

II. GENERAL INFORMATION

The City of Sonora is located on the western slope of the Central Sierra Nevada Mountain Range in the Mother Lode Region of California. The City was incorporated in 1851 and many of its existing buildings date back to the late 1800s and early 1900s. The City's resident population is just under 5,000. However, as Tuolumne County's seat and a major employment and commercial center, the City sees a daily influx of non-residents increasing its population from 22,000 to 25,000.

The existing City Limit encompasses 3 square miles. The City is responsible for maintaining 27.52 miles of paved streets with the following classifications, 2.27 miles Urban Minor Arterial, 4.80 miles Urban Collector, and 20.43 miles Local Urban Group. The City is also responsible for maintaining sidewalks, landscapes, parks and trails, drainage facilities, and various other public facilities. The City is not responsible for sewer and water as it is under the jurisdiction of the

Tuolumne Utilities District. Administration, Fire, Police, Public Works, and Community Development make up the City's Departments who are under the direction of the City Administrator. The 5-member City Council sets the policy for the City.

For all inquiries regarding this RFQ, contact:

Rachelle Kellogg, Community Development Director
(209)532-3508 Ext. #2
rkellogg@sonoraca.com

This RFQ and any subsequent information regarding the RFQ, including changes made to the document and questions/responses to this RFQ will be posted on the City's website at <https://sonoraca.com/request-for-proposals> and listed under the project name. It is the sole responsibility of the Consultant to check the website for any addenda to the RFQ and responses to questions that may be issued. All questions related to the RFQ must be submitted via the email above, no oral questions will be accepted, prior to **4:00 p.m. on Monday, September 11, 2023**. Written responses to questions received will be posted to the City's website **on or before 4:00 p.m. on September 15, 2023**.

The City reserves the right to amend this RFQ at any time up until the due date. Any amendments to or interpretations of the RFQ shall be described in a written addenda posted to the City website as stated above. All addenda issued shall become part of the RFQ. If the city determines that the addenda may require significant changes in the preparation of proposals, the deadline for submitting the proposals may be postponed by the number of days that the City determines will allow proposers sufficient time to revise their submittal. Any new due date shall be included in the addenda.

Tentative Project Schedule:

The following represents the tentative schedule for this project.

TASK	DATE
Release of RFQ	August 18, 2023
Deadline for Final Questions	September 11, 2023
City Response to Questions	September 15, 2023
Proposal Submission Deadline	September 22, 2023
Evaluation of Proposals	September 25 – 29, 2023
Interviews (if needed)	October 2 – 4, 2023
Negotiations	October 10 – 13, 2023
Contract award by City Council	November 20, 2023

Disadvantaged Business Enterprise (DBE) Requirements:

The City has established a goal of **17%** participation of Disadvantaged Business Enterprise (DBE) for this on-call services contract. Only task orders with federal funding will be subject to

the DBE Program. The City anticipates that 4.5% (\$459,000) of the total contract amount will be for federally funded projects. In order for a proposer to be considered responsible and responsive, firms must meet this DBE goal or document an adequate Good Faith Effort (GFE) to meet the goal. Consultant's attention is directed to the documents included under Exhibit C of this RFQ. Selected Consultant must provide written documentation of DBE's participation to confirm that the DBE is participating in the contract. DBEs must be certified at the SOQ submittal deadline. Even if the Exhibit 10-O1 form indicates the DBE goal will be met, you may choose to perform and document your GFE to protect your eligibility for award. You will not be able to prepare a GFE retroactively should your Exhibit 10-O1 form later be determined to be inaccurate for various reasons, e.g. a proposed sub-consultant was not certified, etc. If a GFE is to be performed, it must be performed as part of your proposal preparation, however, the GFE documentation should not be submitted with the proposal.

The City supports the Disadvantaged Business Enterprise (DBE) program and encourages the use of DBE consultants and subconsultants. The primary purpose of the DBE Program is to provide training, assistance, and services to minority, disadvantage, and women business enterprises and provide equal opportunity. DBE, and other small businesses as defined in Title 49 CFR26, are encouraged to participate in the performance of agreements financed in whole or in part with federal funds.

III. SCOPE OF WORK

The City is seeking Consultants to provide on-call engineering services as described within the following scope of work. The on-call contract may be utilized for a number of projects with task orders issued on an as needed basis during the contract term. Task orders with federal funding will be subject to the federal Disadvantage Business Enterprise (DBE) Program. Consultant will be required to meet the DBE goal on federally funded task orders or perform a good faith effort. Task orders which do not contain federal funding will not be subject to the DBE Program. Consultant is to provide the necessary equipment, tools and supplies to provide the required services. The Consultant's personnel shall be capable, competent, and experienced in performing the types of work identified in the Scope of Services with minimal instruction. Consultants shall perform the services as independent contractors and not employees of the City.

1. City Engineering Services

The role of City Engineer includes the administration of engineering related processes and procedures. These duties include:

- Assist in CIP scoping, prioritization, and budgeting.
- Representation as City Engineer at internal and agency meetings.
- Attend City Council Meetings, Planning Commission Meetings, Committee Meetings, and other City meetings, as requested.
- Prepare staff reports, presentations, and recommendations to the City Council.
- Approval of permits and waivers.

- Review and approve Encroachment Permits.
- Conduct field inspections.
- Availability to the public and private developers to handle matters dealing with the engineering functions of City government.
- Review Tentative Subdivision Maps, Parcel Maps, Final Maps, Mergers, and Lot Line Adjustments for compliance with the Subdivision Map Act and City Municipal Code.
- Update, prepare and maintain City Improvement Standards and Specifications
- Review subdivision improvement plans for compliance with City Improvement Standards.
- Review developers' site and utility plans.
- Determine the need for project preliminary studies and review for compliance with all regulations.
- Review and provide comments on environmental documents for proposed projects submitted to the City in accordance with the California Environmental Quality Act.
- Review and provide comments and/or recommended conditions for land development project applications.
- Update and correct City base maps for zoning, planning, and storm drainage system.
- Provide maps and mapping services as requested.
- Preparation and review of legal descriptions for easements, right-of-way, etc.
- Coordination with other agencies for the review of plans, projects, and studies.
- Assistance in the solicitation of proposals for CIP design work.
- Assistance in the procurement of contractors and vendors for public works construction.
- Address failed infrastructure for immediate safety concerns and coordinate preliminary opinion on repair approach as well as coordinate with Public Works staff on the maintenance, operations, and repair of public facilities and infrastructure.

City Engineer should also be familiar with:

- Various regional, State and Federal transportation funding entities and the application process, fund/project management and reporting requirements for those entities.
- The Central Valley Regional Water Quality Control Board Municipal Regional permits
- Tuolumne County Water Quality plan and applicable C-3 Guidebook.

2. Grant and CIP Contract Administration Assistance

The City may require various services related to the delivery of CIP projects. These services may include management and coordination of grant applications, preliminary engineering, land surveying, environmental clearance, final design, acquisition of right of way, relocation of utilities, solicitation of construction bids, construction administration and management, and inspections. Services may also include:

- Assist City staff with the preparation of staff reports.
- Assist City staff with the development of policies and procedures related to the delivery of CIP projects

- Review/prepare monthly meeting agendas, meeting minutes, action item logs, submittal registers, and CPM schedules.
- Prepare and/or review risk registers and risk management plans.
- Provides administrative support for the coordination, planning and implementation of public information workshops and/or similar types of meetings and venues that support the City.
- Prepare Request for Proposals (RFP) and assist City staff with procurement of professional engineering consultants for Planning Application (PA), Engineering Design (ED), Plan, Specifications and Engineer's Estimate (PS&E), and Right of Way phases.
- Prepare detailed scope of services and Independent Cost Estimate (ICE) required for engineering procurements.
- Review professional engineering consultants' scope of services, work plans, and project schedules included in proposals, conduct analysis of cost proposals to the ICE, and assist City staff in the negotiation of contracts.
- Assist the City with projects compliance with Americans with Disabilities Act (ADA) requirements
- Review water, storm and sewer design submittals, and coordinate with appropriate agencies.
- Assist with analyzing bids and awarding the construction contract.
- Assist City staff with oversight of capital projects, attendance at meetings, and tracking and approval of contract change orders.
- Provide administrative support to the City in drafting and applying for permits for City projects with local, state and/or federal agencies as applicable.
- Review draft permit applications prior to submittal to the regulatory agencies, local jurisdictions, and Caltrans with developing plans for mitigation.
- Facilitate coordination with Caltrans, local jurisdictions, regulatory agencies, and utility owners, and assist with resolution of issues as they arise.
- Review project plans, specifications, and estimates and provide comments as needed.
- Assist the City in coordinating with other public agencies or regulatory bodies in procuring regulatory permits and/or performing CEQA/NEPA initial study or other project environmental requirements.¹
- Review technical studies prepared by professional engineering consultants for compliance with regulatory requirements, Caltrans requirements, and scope of services in contracts.
- Review submittals of deliverables with the responses to comments prepared by the professional engineering consultants to verify that comments were incorporated and/or addressed appropriately. Identify issues that need further discussion and set up focus meetings to discuss and resolve issues accordingly.

¹ <https://dot.ca.gov/programs/environmental-analysis/standard-environmental-reference-ser/volume-1-guidance-for-compliance/ch-2-state-requirements>

- Assist with strategizing for project funding, search and analyze grant possibilities for the City, preparing work plans for competitive funding applications, and assisting with the preparation and review of applications.
- Coordinate the planning and preparation of grant proposals/applications for the City, including preparation of grant applications to seek local, state, and federal funding for CIP projects. Prepare and compile all components of each grant submission, ensuring that the proposal is formatted, packaged, and submitted in accordance with granting agency requirements. This also includes assistance with all public hearings and noticing as required by grant agencies. Track grant application proposals, awards, and related statistical information for the City.
- Serve as a liaison between staff, granting agencies, and the City in the budgeting and preparation of grant proposals.
- Coordinate and monitor grant programs for compliance with regulations. Monitor expenditures and provide oversight of awarded grants.
- Provide guidance and assistance to staff in the interpretation of funding agency regulations and requirements.
- Monitor and coordinate the administration of post-award grants to ensure that budget and administrative policies, procedures, and agency requirements are being followed. Manage administrative problems and/or budget changes occurring during the awarded granting period. Maintain knowledge of grant funding policies, regulations, and procedures.
- Assist the City with the EPA Urban Greening Grant Application and Requirements.²
- Assist the City with establishing Federal Highway Administration (FHWA) Title VI Program for Caltrans review.³
- Assist the City with Caltrans's Disadvantaged Business Enterprise (DBE) requirements.⁴
- Assist the City with the review of the Cooperative Work Agreement (CWA) with Caltrans for new federally funded projects.⁵
- Assist the City with preparing Cooperative Agreement Reports (CAR) for new projects and submit to Caltrans for the preparation of the Cooperative Agreement.⁶
- Assist with negotiation and execution of funding Cooperative Agreements with Caltrans, local jurisdictions, or other entities.⁷
- Assist with the negotiation of agreements for the City-owned right of way, including the right of entry agreements, leases, and, preparation of utility and maintenance agreements.⁸
- Assist the City with Active Transportation Program (ATP) application and reporting.⁹

² <https://www.epa.gov/npdes-permits/npdes-permits-epas-pacific-southwest-region-9>

³ <https://dot.ca.gov/programs/local-assistance/guidance-and-oversight/title-vi/requirements>

⁴ <https://dot.ca.gov/programs/civil-rights/dbe>

⁵ <https://dot.ca.gov/programs/local-assistance/projects/cooperative-work-agreement-cwa>

⁶ <https://dot.ca.gov/SearchResults?q=Cooperative+Agreement+Report>

⁷ <https://dot.ca.gov/SearchResults?q=Cooperative+agreement+funding>

⁸ <https://dot.ca.gov/SearchResults?q=Utility+agreements>, <https://dot.ca.gov/SearchResults?q=Maintenance+agreement>

⁹ <https://dot.ca.gov/programs/local-assistance/fed-and-state-programs/active-transportation-program/report>

- Assist the City with required Caltrans E-76 and additional documents and exhibits.¹⁰
- Assist the City with Storm Water Grant Program Grant applications and requirements.¹¹

3. Engineering Design

On-call design services typically include the City selecting a consultant with the appropriate qualifications for a particular Public Works project with a defined scope. Services may include civil, structural, environmental, storm water, or other types of design services for projects listed and similar to those listed in the Capital Improvements Program (CIP) section below. When requested, the design consultant will provide a proposal with defined tasks needed to prepare a complete design package ready for bidding and construction. Services engineering design consultants may be called on to provide may include the following:

- Conduct topographic surveys and collect data.
- Acquire filed records of survey, corner records, subdivision maps and right-of-way drawings from City. Interface with City GIS mapping, acquire existing facility record drawings, and other information available from the City needed to prepare a design.
- Create AutoCAD base maps to serve as the basis for design.
- Develop preliminary design report technical memo and/or preliminary (35%) design drawings. Existing grades, private improvements, signage and striping, and utilities to be considered in the development of the preliminary design drawings.
- Initiate the process of coordinating with the utility companies and to acquire utility underground information from those companies.
- Evaluate alignment alternatives and project constraints, and provide recommendations to the City for consideration.
- Refine preliminary design layouts based on feedback from City engineering, operations, and maintenance staff, and other City consultants when necessary.
- Conduct site visits to review the impacts of improvements and further review the plan to ensure the City's and public's concerns are being met.
- Provide design calculations, hydraulic, geotechnical, or any other investigation and analysis needed to complete plans and technical specifications.
- Perform calculations to determine project type and anticipated requirements for the State Water Board Construction General Permit and include anticipated requirements in design documents.
- Complete plans and specifications in conformance with City standards.
- Submit plans, specifications, and estimates at the 65%, 95%, and 100% levels of completion.
- Provide bidding support as requested by City such as providing technical responses to bidder questions or managing mandatory pre-bid meetings.
- Provide technical engineering services during construction including submittal review, issuing responses to requests for information, and design clarifications.

¹⁰ <https://dot.ca.gov/programs/local-assistance/reports/e-76-obligated>

¹¹ https://www.waterboards.ca.gov/water_issues/programs/grants_loans/swgp/

- At the end of construction produce electronic As-Built (AutoCAD Civil 3D and PDF) set of Record Drawings (based on information provided by the Contractor) for use in the City's archives.
- When applicable, provide services in accordance with applicable Federal and State grant and loan compliance. Specific grant and loan funding requirements will be provided to the selected firm prior to execution of an agreement.

4. Land Development Review

The firm is to provide staffing to represent the City and interact with the public in processing the City's public permit applications. This work includes plan check for civil engineering design plans which includes, but is not limited to street, sewer, water, storm water, recycled water, green infrastructure, storm drain, fiber optic, grading, erosion control, signing & striping, street lighting, traffic signal and all related engineering studies, including hydrology and hydraulics, soils, water and sewer studies and structural analyses.

5. Construction Management

Construction Management (CM) services typically include serving as the City's on-site representative during construction of a Public Works project from project award through to final completion. The City may request full or part-time CM services on one or several projects, which will be defined by a detailed scope of work. CM services the consultant will be requested to provide may include the following:

- Provide bidding and award assistance as directed by City.
- Provide technical and administrative management services for the project; provide oversight of construction related activities for the project; maintain close liaison with the City's project manager to convey all project information, communications, and correspondence in a timely manner.
- Keep the project manager up to date on day to day activities, construction progress and status.
- In coordination with the project manager, plan public notifications for construction related impacts and assist the City with responding to inquiries and complaints about the construction.
- Organize and lead weekly construction progress meetings and/or additional meetings required in the administration of the project.
- Perform resident engineer duties including performing inspections, preparing daily observation reports, reviewing, and documenting extra work reports, preparing weekly statement of working days to track project time, measure and track progress of work, coordinate construction quality control sampling and testing, confirm general conformance with project plans, specifications, contract and labor codes, permits and agreements.
- Monitor the Contractor's compliance with storm water pollution control plan documentation requirements and implementation of storm water Best Management Practices (BMPs).

- Identify current unforeseen conditions and potential coordination issues associated with the construction project and consult with the City project manager and design engineer to review and implement solutions in a manner that minimizes cost and schedule impacts to the project.
- Coordinate and track submittal reviews from the contractor with the design engineer and City project manager.
- Review, coordinate, and track Requests for Information (RFIs) and responses with the City project manager and the design engineer.
- The construction contractor is solely responsible for ensuring the safety of its own personnel and implementing all safety plans in compliance with Cal OSHA. The CM consultant shall ensure the safety of consultant's own staff on the project site, and to work collaboratively with the City and Contractor to promote site safety. Provide notification to Contractor when contract provisions for the protection of the public and project personnel are not being followed.
- Measure completed work and review and prepare monthly progress payments.
- Track extra work costs in the field. Review cost proposals submitted by contractor, and negotiate and prepare contract change orders. Properly inform the City project manager of field issues that may have cost or schedule impacts within a timely manner. Secure the project manager's approval prior to authorizing extra work.
- Organize final project site walk and prepare final punch list. Coordinate with contractor to ensure all outstanding project items are addressed prior to final completion.
- Review the final record drawings submitted by the contractor at the completion of construction. Prepare correction memos for the contractor to perform record drawing revisions.
- Assist City in preparing and filing all final project closeout documentation including preparation and filling of Certificate of Completion with County.
- Finalize all project documentation and turn over all project electronic (and paper, if applicable) files, photos, and reports in a neat and organized manner for City archival purposes.

6. Inspection Services

Inspection services may either be requested as a task included under a larger construction management scope of work, or as a separate inspection service for construction or development projects administered by City staff. Construction inspection typically includes serving as the City's on-site field representative during construction of a Public Works project or private development within the public right of way to observe and document construction progress. The City may request full or part-time daily inspection on one or several projects for either the entire duration of construction or some subset thereof, as detailed in the agreed upon scope of work. Construction inspection services the consultant will be requested to provide may include the following:

- Complete Daily Observation Reports for every day the consultant inspector is on site. Report should document the Contractor's work including field conditions, crew size, equipment in operation, any field issues or conflicts observed, any extra work,

confirming materials installed match products submitted, and general conformance with project plans and specifications. Supplement report with photo documentation.

- Observe work is progressing in general conformance with construction documents and applicable codes, permits, regulations, and agreements.
- Verify products being installed and incorporated into the work match the products submitted and favorably reviewed by the designer and City.
- Collect and validate weight tickets and material tags. Check the proper mix design or specified material has been delivered.
- Observe Contractor's compliance with federal and state safety and health standards. Document and notify contractor of safety related items the inspector believes may be out of compliance to be addressed by the Contractor's responsible safety personnel.
- Monitor Contractor's conformance with submitted and favorably reviewed traffic control plans in road and street work zones. Notify Contractor and City of any issues or modifications needed to approved plan to improve public access and/or safety.
- Monitor the Contractor's implementation and documentation of all storm water compliance requirements and the effectiveness and maintenance of storm water Best Management Practices (BMPs).
- Maintain a daily photo log of all construction activities.
- If needed interview the construction crew for compliance with compliance with labor laws, and regulation.
- Coordinate construction quality control sampling and testing with Contractor, observe and document all project testing required prior to project acceptance, coordinate with City project manager for specialty inspections that may be required such as welding, structural bolting, compaction, etc.
- Coordinating with contractor to compare their notes on as-built quantities and finalize the agreed quantities for review and approval by Construction Manager.
- Provide support to City project managers, resident engineers and other City or consultant staff as needed.
- Notify City project manager/resident engineer of any field changes that may impact cost or schedule within a timely manner so that appropriate action may be taken to minimize impacts.
- Track and document Contractor extra work on a daily basis. Ensure contractor submits daily extra work reports in a timely manner. Review and acknowledge extra work reports in the field and provide copies to City project manager. Assist City in contract change orders negotiation based on Daily Observation Reports as requested.

IV. REQUEST FOR QUALIFICATIONS/PROPOSALS

The proposals submitted in response to this RFQ shall be used as a basis for selecting the Consultant. The Consultant's proposal will be evaluated and ranked according to the criteria provided in this RFQ. Unsigned proposals or proposals signed by an individual not authorized to bind the prospective consultant firm will be considered nonresponsive and rejected.

The proposal must show that the Consultant is qualified to perform the services required and demonstrate the Consultant's understanding of, and approach to, completing the required services, with competent and experienced personnel, included with the Scope of Work. It should also reflect that the Consultant is fully aware of all applicable local, State and Federal laws, regulations, requirements, standards, and specifications as well as Caltrans and FHWA administrative controls. Consultant is expected to examine all provisions, specifications, and instructions included in this RFQ, failure to do so will be at the Consultant's risk.

Proposals shall be organized in a manner outlined below. Proposal content shall be limited to 15 single-sided pages, not including required forms and resumes. The City, at its option, may require a consultant to provide additional information and/or clarify requested information. For the proposal to be considered it must be delivered in a sealed envelope with the project title and firm's name clearly printed on the envelope face. Consultant must submit one (1) electronic copy, one (1) original, and four (4) hard copies by mail or delivered to:

City of Sonora
Rachelle Kellogg
Community Development Director
94 N. Washington Street
Sonora, CA 95370

AND RECEIVED BY 4:00 P.M. ON SEPTEMBER 22, 2023

The following information must be included in the proposals submitted in response to this RFQ:

1. **Transmittal Letter (Signed)**: Proposals must include a maximum 2-page transmittal letter indicating the name of the organization submitting the proposal; whether the proposing entity is an individual, partnership, corporation, company, or joint venture; the name, telephone number, email, and business address of the contact person who will be authorized to respond to the questions regarding the proposal; and the name of the individual authorized to negotiate the contract on behalf of the consulting entity. The transmittal letter should refer to this RFQ by title and date, include statement of California licensing, and be signed by a person authorized on behalf of the consulting firm to solicit business for the firm.
2. **Table Of Contents**: The table of contents shall be complete and clear, listing headings and pages to enable easy reference.
3. **Profile of the Firm**: This section shall include a brief description of the firm size as well as the local organizational structure and Organizational Chart. Additionally, this section shall include a listing of any lawsuit or litigation and the result of that action resulting from (a) any public project undertaken by the respondent or by its subcontractors where litigation is still pending or has occurred within the last five years, or (b) any type of project work claims, or settlements were paid by the respondent or its insurers within last five years.

4. **Conflict of Interest Statement:** The proposing Consultant shall disclose any financial, business, or other relationship with the City of Sonora that may have an impact upon the outcome of the contract or the construction project. The Consultant shall also list current clients who may have a financial interest in the outcome of this contract. The Consultant shall also disclose any financial interest or relationship with any construction company that might submit a bid on a City construction project.
5. **Qualifications Of Key Personnel:** This section shall provide a description of the Respondents qualifications and previous experience with similar contracts. It shall document that required State licensing is in place to complete the required engineering services and demonstrate familiarity of providing services for federally funded projects and those with Caltrans oversight. Provide resumes and references for all key team members. Resumes shall include the length of employment with the proposing Consultant. Description of project management experience shall include a summary of the work performed, total cost of the program slash projects managed, percentage of the work the respondent was responsible for, period over which the work was completed, and the name, title, and phone number of the clients to be contacted for references. A minimum of three client references shall be included for the project manager and each of the key personnel.
6. **Staffing Plan:** Provide a staffing plan that shows anticipated staffing for the duration of the contract. Discuss the workload, both current and anticipated, for all key team members and their capacity to perform the requested services for the contract. Include a list of all appropriate licenses and certificates with license numbers and expiration dates. Demonstrate their familiarity, qualifications, and experience with federal, state, and local regulatory compliance procedures and requirements, including Caltrans Local Assistance. Provide verification that assigned staff are available to attend meetings and for project oversight/inspections in person as required.
7. **Subconsultants:** The proposal must include a list of all subconsultants providing services the Consultant for the completion of the work and describe their functional roles. Include the names, address, emails and current telephone number of the firm and key representatives assigned. Any proposed changes in subconsultants is subject to prior written approval by the City.
8. **Approach and Exceptions:** Include a detailed Scope of Work Statement describing all services to be provided and deliverables. Describe your cost control and budgeting methodology for this project. Describe the technical approach that will be used to provide the required services. Identify any supplemental tasks deemed necessary. Describe any and all proposed exceptions, alterations or amendments to the Scope of Work or other requirements of this RFQ, including the Consultant Services Agreement (Exhibit A).
9. **Required Forms:** Proposals must include the following completed forms:
 - a. California Levine Act Statement

- b. LAPM Exhibit 10-Q Disclosure of Lobbying Activities. Complete one Exhibit 10-Q for the prime consultant and one for each subconsultant.
- c. LAPM Exhibit 10-U Consultant in Management Support Role Conflict of Interest and Confidentiality Statement.
- d. LAPM Exhibit 10-01: Consultant Proposal DBE Commitment
- e. LAPM Exhibit 15-H DBE Information – Good Faith Effort

All forms shall be included in the respondent's proposal and do not count towards the page limit. Levine Act statement and LAPM forms shall be completed for the prime consultant firm as well as all subconsultants.

The City will not accept proposals submitted after the above date and time, and will return any unopened proposals which are received late. Postmarks will not be accepted. Fax, telephone, telegraphic and email proposals will not be accepted. Proposals will not be publically opened. Any protests, disputes or complaints shall be addressed to the City Administrator by calling (209)532-4541.

Respondents are solely responsible for their own expenses in preparing and submitting a response to this RFQ, as well as for subsequent interviews and contract negotiations with the City. The City will not be liable to any respondent for any costs or damages incurred by the respondent in preparing the response, loss of anticipated profit, or any other claim.

All documents, including specific RFQ responses, submitted to the City become the property of the City. All materials submitted by proposals are subject to public inspection under the California Public Records Act, except that the City may withhold from disclosure clearly marked confidential trade secret information contained in any proposals, and proposals submission of information so marked shall constitute its agreement to defend and indemnify the City from any claim or liability for non-disclosure thereof. After award of the contract, all responses will be regarded as public records and will be subject to review by the public. Any language purporting to render all or portions of the proposal confidential will be regarded as non-effective and be disregarded.

This RFQ is not an agreement to purchase or contract for services. The City reserves the right to modify or cancel in whole or in part this RFQ, to reject any and all proposals, to accept the proposals they consider most favorable to the City's interests in their sole discretion, and to wave irregularities or informalities in any proposals or in the proposal procedures. The City reserves the right, in its sole discretion, not to enter into a contract as a result of this RFQ.

All proposals received will be kept on file and considered valid for a three-year period following the due date of this RFQ.

Cost Proposals:

Cost proposals will be requested separately DO NOT SUBMIT THEM WITH THE TECHNICAL PROPOSAL. Cost proposals shall not be submitted until requested by the City. Once requested Consultants on the short list shall submit a cost proposal for all of the work included within the Scope of Work in a separate sealed envelope. Upon completion of the evaluation and selection process, only the cost proposal from the most qualified Consultant will be opened to begin cost negotiations. All unopened cost proposals will be returned at the conclusion of the procurement process.

Consultant shall be paid based on a Cost-Plus-Fixed-Fee basis. The Cost Proposal, sample cost proposals are included with Attachment B, is to outline the specific rates of compensation for both home office and field office. Complete one Cost Proposal for the prime consultant and one for each subconsultant. Include rates for both home office and field office. Markups for subconsultants are not allowed. The cost proposal shall include all costs to the City, including all labor, profit (not to exceed 10%), administrative and overhead fees and other estimated direct costs that do not exceed current State Department of Personnel and Administration Rules. If applicable include, Cost Proposal for Contracts with Prevailing Wages.

All workers employed on public works projects must be paid the prevailing wage rate determined by the Director of the Department of Industrial Relations according to the type of work and location of the project. Prime and subconsultants must include prevailing wage rate information in the cost proposal and provide a Prevailing Wage Rate Policy on company letterhead, signed and dated which is subject to Caltrans' approval. Consultants will submit certified payroll records as required.

If your firm or proposed subconsultant firms have an approved ICR, include the ICR Schedule with FAR references for disallowed costs, the Cognizant Approval Letter for the ICR FYE proposed for your firm and each of your proposed subconsultants.

Contracts shall not be awarded to a consultant without an adequate financial management and accounting system as required by 48 CFR Part 16.301-3, 49 CFR Part 19, 2 CFR Part 200, and 48 CFR Part 31.

V. SELECTION CRITERIA AND PROCESS

The following describes the evaluation process and associated components. The objective is to perform a thorough and fair evaluation of submitted proposals and facilitate the selection of a Consultant that best satisfies the City's requirements. An Evaluation Committee comprised of City staff and other individuals that the City deems appropriate will review each proposal for completeness and content. Responses that do not include the proposal content requirements identified within this RFQ, and any subsequent addenda, will be considered incomplete by the City and will receive no further consideration. The Evaluation Committee will analyze responses based on the needs described in this RFQ, including relevant experience of the

consultant with Federal and State funded projects and grant funding experience. The Evaluation Committee will review and rank the proposals. The evaluation of the proposals shall be within the sole judgement and discretion of the Evaluation Committee. All proposers will be notified of their ranking and can request a debriefing meeting.

The Evaluation Committee may choose to conduct interviews with the top ranked firms. These firms will be notified of the time and place of the interviews and any additional information that may be required to be submitted. It is expected that key staff proposed to work on the project will attend interviews as part of the selection process. The City reserves the right to waive interviews.

Evaluation Criteria:

Responsive proposals will be evaluated according to each of the following Evaluation Criteria and scored based accordingly:

Evaluation Criteria	Max Points Available
Understanding of the work to be done	25
Experience with similar kinds of work	20
Quality of staff for work to be done	15
Capability of developing innovative or advanced techniques	10
Familiarity with state and federal procedures	10
Financial responsibility	10
Demonstrated Technical Ability	10
Total	100

The above factors will be considered in evaluating proposals. Proposals that take substantial exceptions to the agreement or propose alternative terms may be determined by the City, at its sole discretion, to be unacceptable and no longer considered for award. Only the exceptions included within the proposal will be considered when negotiating the agreement.

Upon selection of the most qualified consultant, the City will begin negotiations with that firm. If an agreement cannot be reached after a reasonable period of time, as determined by the City, then the City will formally terminate negotiations with that firm and begin negotiations with the next highest ranked applicant. The City further reserves the right to terminate negotiations at any point without obligation to contract for services with any firm.

VI. CONTRACT PROCESS

Upon acceptance of a cost proposal and successful contract negotiations, staff will recommend the contract to be awarded by the City Council. Additionally, the City is required to submit Exhibit 10-C, A&E Consultant Contract Reviewers Checklist, for all A&E consultant contracts for

Caltrans review and acceptance prior to contract award. Following the award the City will issue the Notice to Proceed.

Upon completion of the evaluation, negotiations and award, the selected firm will be required to execute a City of Sonora Consultant Services Agreement, a draft of which is attached hereto as (Exhibit A), which will specify the billing rates, personnel to be assigned, and other terms. Consultant shall be paid based on Cost-Plus-Fixed-Fee basis. The Fixed Fee shall not exceed ten (10) percent of the total direct and indirect costs of the contract. Consultant should review the agreement, including insurance requirements and indicate in their submitted technical proposal if there are any exceptions to the agreement requirements or language that requires further discussion or clarification.

Time is of the essence in awarding the contract. The City reserves the right to cancel any intent to award and proceed to the next firm if the selected Consultant does not execute the project contract within 14 days after the notification of intent to award and contract is received by the Consultant.

Task Orders:

The Consultant will work under the direction of the City Administrator or designee. The on-call agreement may be utilized for a number of projects with task orders issued on an as-needed basis during the term of the agreement. The potential projects may vary in scope and size. No monthly retainer is anticipated and each task will be assigned a task order to bill against. The task order shall detail the tasks required for particular projects, staffing, schedule, DBE Commitment, and projected costs. The costs will be based on the specified rates within the master on-call contract and include all expenses necessary to complete the project. The City Administrator or designee shall confer with the consultant to establish the maximum cost for the specific project and the completion date.

Pursuant to an authorized Task Order, the Consultant shall provide engineering services and all necessary personnel, material, transportation, lodging, instrumentation, and the specialized facilities and equipment necessary to satisfy all appropriate agencies and required to ensure compliance with all applicable Federal, State, and Local statutes, laws, codes, regulations, policies, procedures, ordinances, standards, specifications, performance standards, and guidelines, applicable to the Consultant's services and work product. The Consultant is responsible for supplying and providing all necessary equipment and protective clothing in accordance with City standards.

Task Order projects may receive federal funds from the U.S. Department of Transportation. Projects using federal funds are subject to Part 26, Title 49, Code of Federal Regulations (CFR) entitled "Participation by Disadvantaged Business Enterprises (DBE) in Department of Transportation Financial Assistance Programs." Firms submitting a SOQ shall be fully informed of the requirements of the regulations.

VII. GENERAL CONDITIONS

- Consultant must have the ability to respond in a timely and cost efficient manner to City requests. Consultant must be available to attend, in person, City Council Meetings, Sonora Planning Commission Meetings, City Committee Meetings and project meetings as requested. Consultants are expected to be present, as necessary, to manage and inspect capital projects as well as inspections normally conducted by the City Engineer.
- Proposing firms, their principals or subconsultants may not be debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.
- The City of Sonora hereby notifies all proposing firms that it will affirmatively ensure that in regards to any contract entered into pursuant to this RFQ, disadvantaged business enterprises and minority business enterprises will be afforded full opportunity to submit proposals in response to this invitation, and that proposing firms will not be discriminated against on the grounds of race, religion, creed, medical condition, color, marital status, ancestry, sex, age, national origin or disability in consideration of award.
- The City of Sonora requires that any Consultant or consulting firm hired by the City, or any subconsultant, to perform any work, does not discriminate against any employee or applicant for employment because of race, religion, religious affiliation, creed, physical or mental condition, color, marital status, familial status (# or ages of children) ancestry, sex, age, national origin, sexual orientation or other arbitrary cause.
- Selected Consultant shall comply with Chapter 10.1.3 of the Caltrans's Local Assistance procedures manual regarding the A&E Consultant Contract Audit and Review Process. Consultant shall account for costs appropriately and maintain records, including supporting documentation, adequate to demonstrate that costs claimed have been incurred, area allocable to the contract, and comply with Federal cost principles. Caltrans' Office of Audits and Investigation (A&I), and, if applicable, representatives of the Federal government, have the right to conduct an audit of all costs. If the costs are subsequently determined to be unallowable, these costs are subject to repayment. All proposed A&E contracts and supporting documents are subject to audit or review by Caltrans' A&I, other state audit organizations, or the Federal government.
- The Consultant shall maintain a set of project files that shall be provided to the City upon written request. All products used or developed in the execution of any contract resulting from this RFQ will remain in the public domain at the completion of the contract.
- All consultants, including prime and subconsultants, on proposed A&E Consultant Contracts, greater than \$150,000, are subject to a financial review of the their Indirect Cost Rates by Caltrans. Caltrans will either accept, adjust or reject the Indirect Cost Rate. For Indirect Cost Rates that have been adjusted the Consultant will need to provide a revised cost proposal.

- Consultants, and subconsultants, will be required to provide the City with certain financial documentation, and required forms, to support their Indirect Cost Rates (ICR). The City will submit the required documents to the Independent Office of Audits and Investigations (IOAI) for review. The IOAI will either accept or adjust the ICR, using a risk-based approach. Negotiations cannot be completed and contracts executed until the Consultant, and subconsultants, ICRs have been approved by IOAI.
- Consultant shall assure that the designated project team, including subconsultants, is used for the entirety of the project. Departure or reassignment of, or substitution for, any member of the designated project team or subconsultants shall not be made without the prior written approval of the City. The substitute personnel shall have the same job classification and meet or exceed the qualifications and experience level of the previously assigned personnel, at no additional cost to the City.
- By submitting a proposal, Consultant warrants that any and all licenses and/or certifications required by law, statute, code or ordinance in performing the scope of work under this RFQ are currently held by the Consultant and are valid and in full force and effect. Required licenses and/or certifications must stay in effect for the life of the contract. Selected Consultant must obtain a City Business License upon execution of the Consultant Services Agreement.
- City will negotiate a not-to-exceed fee for all services requested. Consultant will invoice the City on a monthly basis. Payments will be made on the basis of satisfactory performance of work completed by the Consultant as determined by the City. Invoices are to include an itemized breakdown of Consultant's hours charged to the project during the billing period by services rendered. Final payment to the Consultant will only be made when the City finds that the work performed by the Consultant to be satisfactory and the final work product and documents submitted meet the tasks of the project and accepted by the City. Processing of payments is made in accordance with the City's adopted purchasing policy.
- The Consultant's work will be subject to inspections by representatives of the City. Consultant shall carry out the instructions received from the City and shall cooperate with the City and other involved agencies.
- The City reserves the right to request proof and inspection of work and documents. The Consultant has total responsibility for the accuracy and completeness of all prepared documents. The documents furnished by the Consultant shall be of a quality acceptable to the City. The responsibility for accuracy and completeness of such items remains solely that of the Consultant.
- The Consultant shall have a quality control plan in effect during the entire time work is being performed under contract. All deliverables will be compliant with the State of California Department of Transportation Quality Assurance Program (QAP) Manual for Use by Local Agencies.

Attachment A

Consultant Services Agreement

(Including LAPM Exhibit 10-R, A&E Boilerplate Agreement Language)

CONSULTANT SERVICES AGREEMENT

On-Call Professional Engineering Services

This Consultant Services Agreement ("Agreement") is made and entered into on this ____ day of _____, 2023 (the "Effective Date"), by and between the **CITY OF SONORA**, a California municipal corporation (the "City"), and _____ ("Consultant"). The City and Consultant may individually be referred to herein as a "Party" or collectively as the "Parties." There are no other parties to this Agreement.

RECITALS

A. City has determined that engineering services are required for On-Call Professional Engineering Services (the "Project").

B. Consultant has submitted a proposal to City that includes a scope of proposed professional engineering services for the Project, attached hereto and described more fully in **Exhibit A** ("Services").

C. Consultant represents that it is qualified, willing, and able to provide the Services to City, and that it will perform the Services related to the Project according to the cost proposal that is also attached hereto and described more fully in **Exhibit B** (the "Cost Proposal").

D. City desires to engage the services of Consultant for the Project.

E. Task orders issued under this Agreement may be funded in whole or in part with Federal Highway Administration ("FHWA") funds received by City pursuant to an agreement with the California Department of Transportation ("Caltrans"). Consultant shall comply with the federal funding requirements applicable to this Agreement, as further set forth herein and included within the attached **Exhibit C**, and Caltrans requirements as set forth within this Agreement and the attached **Exhibit D**.

NOW, THEREFORE, in consideration of the promises and covenants set forth below, the Parties agree as follows:

AGREEMENT

1. Project Coordination.

A. City. The City Administrator shall be the representative of City for all purposes under this Agreement. The City Administrator, or his or her designee, is hereby designated the "Contract Administrator" for City and shall supervise all aspects of the progress and execution of this Agreement.

B. Consultant. Consultant shall assign a single "Project Manager" to have overall responsibility for the progress and execution of this Agreement for Consultant. _____ is hereby designated the Project Manager for Consultant. The Project Manager shall submit progress reports on each specific project in

accordance with the assigned task order. These reports shall be submitted at least once a month. The report should be sufficiently detailed for the City's Contract Administrator or Project Coordinator to determine, if Consultant is performing to expectations, or is on schedule to provide communication of interim findings, and to sufficiently address any difficulties or special problems encountered, so remedies can be developed. The Project Manager shall meet with the Contract Administrator or Project Coordinator, as needed, to discuss progress on the project(s) or any issues/concerns.

C. Performance by Key Employee. Consultant represents to City that the Project Manager will be the person primarily responsible for the performance of the Services and all communications related to the Services. City enters into this Agreement in reliance on that representation by Consultant. There shall be no change in the Project Manager or members of the project team, as listed in the approved Services and Cost Proposal, without the prior written approval of the City Administrator. The Consultant must justify the need for the substitution. The proposed substituted person or subconsultant must be as qualified as the original, in the discretion of the City Administrator, and at the same or lower cost.

2. Term. The term of this Agreement shall be three years commencing on the Effective Date unless terminated earlier as set forth herein. This Agreement may be mutually extended in writing after the initial three (3) year term, on a year-by-year basis, for up to two (2) additional one (1) year terms at the sole discretion of the City Administrator or his or her designee.

3. Time of Performance. Consultant warrants that it will commence performance of the Services upon receiving a written notice to proceed from the Contract Administrator ("Notice to Proceed"), and shall be fully completed on or before _____, unless extended by Agreement amendment. The time of performance is a material term of this Agreement relied on by City in entering into this Agreement.

4. Consultant Services.

A. Services. Consultant agrees to perform the Services for City in connection with the Project, as specified in **Exhibit A**. In accordance with Section 29, Independent Contractor, Consultant shall furnish, at its own expense, all materials, equipment, and personnel necessary to carry out the terms of this Agreement, except as otherwise specified in this Agreement. Consultant shall not use the City premises, property (including equipment, instruments, or supplies), or personnel for any purpose other than as required for the performance of its obligations under this Agreement. Consultant shall not receive additional compensation for the performance of any services, unless they are included in **Exhibit B**. If there is any conflict between the approved Services and the provisions of this Agreement, this Agreement shall control. No subcontract shall be compensated by City, other than any subcontracts and consultants referenced in **Exhibit A and B**, without prior written approval from City.

B. Modification of Services. Only a written authorization by the City Administrator, or his or her designee, may authorize extra or changed work. Failure of Consultant to secure a written authorization for extra or changed work shall constitute a waiver of any and all

rights to adjustment in the Agreement price or Agreement time due to such unauthorized work. Consultant shall not be entitled to any compensation for the performance of such work. Consultant further waives any and all right or remedy by way of restitution or quantum meruit for any and all extra work performed without such express and prior written authorization of the Contract Administrator or designee.

C. Approval of Services. The Contract Administrator shall have the right to reject, or require modification of, any and all materials and supplies furnished by Consultant that do not comply with the scope of work described within this Agreement, above. Consultant shall only receive direction and approval for Services from the Contract Administrator.

5. Duties of City. In order to permit Consultant to render the Services required hereunder, City shall, at its expense and in a timely manner:

A. Provide such information as Consultant may reasonably require to undertake or perform the Services;

B. Oversee the progress of the Project, attend meetings and site visits, and advise on the direction of the Project;

C. Promptly review any and all documents and materials submitted to City by Consultant in order to avoid unreasonable delays in Consultant's performance of the Services; and

D. Promptly notify Consultant of any fault or defect in the performance of Consultant's services hereunder.

E. Monitor Consultant's performance for quality and compliance with applicable standards and specifications.

6. Termination.

A. City reserves the right to terminate this Agreement upon thirty (30) calendar days written notice to Consultant with the reasons for termination stated in the notice.

B. City may terminate this Agreement with Consultant should Consultant fail to perform the covenants herein contained at the time and in the manner herein provided. In the event of such termination, City may proceed with the work in any manner deemed proper by City. If City terminates this Agreement with Consultant, City shall pay Consultant the sum due to Consultant under this Agreement prior to termination, unless the cost of completion to City exceeds the funds remaining in the Agreement. In which case, the overage shall be deducted from any sum due Consultant under this Agreement and the balance, if any, shall be paid to Consultant upon demand.

C. The maximum amount for which the City shall be liable if this Agreement is terminated is _____.

D. Upon termination, any and all of City's documents or materials provided to Consultant and any and all of Consultant's documents and materials prepared for or relating to the

performance of its duties under this Agreement shall be delivered to City as soon as possible, but not later than thirty (30) days after termination.

E. The City may temporarily suspend this Agreement, at no additional cost to the City, provided that Consultant is given written notice, as described under Section 37(N), of temporary suspension. If City gives such notice of temporary suspension, Consultant shall immediately suspend its activities under this Agreement. A temporary suspension may be issued concurrent with the notice of termination.

7. Allowable Costs and Payments.

A. The method of payment for this Agreement will be based on actual cost plus a fixed fee. City will reimburse Consultant for actual costs (including labor costs, employee benefits, travel, equipment rental costs, overhead, and other direct costs) incurred by Consultant in performance of the work. Consultant will not be reimbursed for actual costs that exceed the estimated wage rates, employee benefits, travel, equipment rental, overhead, and other estimated costs set forth in the approved Consultant's Cost Proposal, unless additional reimbursement is provided for by Agreement amendment. In no event, will Consultant be reimbursed for overhead costs at a rate that exceeds City's approved overhead rate set forth in the Cost Proposal. In the event, that City determines that a change to the work from that specified in the Cost Proposal and Agreement is required, the Agreement time or actual costs reimbursable by City shall be adjusted by Agreement amendment to accommodate the changed work. The maximum total cost as specified in Paragraph "H" shall not be exceeded, unless authorized by Agreement amendment.

B. The indirect cost rate established for this Agreement is extended through the duration of this specific Agreement. Consultant's agreement to the extension of the 1-year applicable period shall not be a condition or qualification to be considered for the work or Agreement award.

C. In addition to the allowable incurred costs, City will pay Consultant a fixed fee of \$_____. The fixed fee is nonadjustable for the term of the Agreement, except in the event of a significant change in the scope of work and such adjustment is made by Agreement amendment.

D. Reimbursement for transportation and subsistence costs of Consultants and subconsultants shall not exceed rates authorized to be paid rank and file State employees under current State Department of Personnel Administration (DPA) rules. If the rates invoiced by Consultant or subconsultant are in excess of DPA rates, the Consultant or subconsultant is responsible for the cost difference and any overpayments inadvertently by the City shall be reimbursed to City, or the State, on demand within thirty (30) days of such invoice.

E. When milestone cost estimates are included in the approved Cost Proposal, Consultant shall obtain prior written approval for a revised milestone cost estimate from the Contract Administrator before exceeding such cost estimate.

F. Progress payments will be made monthly in arrears based on services provided and allowable incurred costs. A pro rata portion of Consultant's fixed fee will be included

in the monthly progress payments. If Consultant fails to submit the required deliverable items according to the schedule set forth in the Statement of Work, City shall have the right to delay payment or terminate this Agreement in accordance with the provisions of Section 6, Termination.

G. No payment will be made prior to approval of any work, nor for any work performed prior to approval of this Agreement. The granting of any progress payment by City, or the receipt thereof by Consultant, or any inspection, review, approval or oral statement by any representative of City or other party, shall not, in any way, waive, limit, or replace any certification or approval procedures normally required or lessen the liability of Consultant to re-perform or replace unsatisfactory Service, including but not limited to cases where the unsatisfactory character of such Service may not have been apparent or detected at the time of such payment, inspection, review or approval.

H. The City shall retain five percent (5%) of the value of the Services and materials used for each invoice submitted as security for the fulfillment of a Task Order under the Agreement by the Consultant. City shall pay the Consultant the balance not retained after deducting therefrom all previous payments and all sums to be kept or retained under the provisions of the Agreement. The retention will be included in the final payment to the Consultant for the Task Order.

I. Invoices shall be submitted to the City no later than forty-five (45) calendar days after the performance of work for which Consultant is billing. Invoices shall detail the work performed on each milestone and each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this Agreement project title. Final invoice must contain the final cost and all credits due to City, including any equipment purchased under the provisions of Section 15, Equipment Purchase, of this Agreement. The final invoice should be submitted within sixty (60) calendar days after completion of Consultant's work. Invoices shall be mailed to the Contract Administrator at the following address:

City of Sonora
94 N. Washington Street
Sonora, CA 95370
Attention: Administration

Prompt Payment from City to Consultant

The City shall make all project progress payment within 30 days after receipt of an undisputed and properly submitted payment request from Consultant on a professional service contract. If the City fails to pay promptly, the City shall pay interest to the Consultant, which accrues at the rate of 10 percent per annum on the principal amount of the a money judgment remaining unsatisfied and

pro-rated as necessary. Upon receipt of the payment request, the City shall act in accordance with both of the following:

- 1) The city shall review each payment request as soon as feasible after receipt to verify it is a proper payment request.
- 2) The City must return any payment request deemed improper by the City to the Consultant as soon as feasible, but no later than seven (7) days, after receipt. A request returned pursuant to this paragraph shall include documentation setting forth in writing the reasons why it is an improper payment request.

Prompt Payment Certification

For projects awarded on or after September 1, 2023, the Consultant must submit Exhibit 9-P to the City by the 15th of the month following the month of any payment(s). If the Consultant does not make any payments to subconsultants, supplier(s), and/or manufacturers they must report “no payments were made to subs this month” and write this visibly and legibly on Exhibit 9-P.

The City must verify all Exhibit 9-P information, monitor compliance with prompt payment requirements for DBE and non-DBE firms, and address any shortfalls to the DBE commitment and prompt payment issues until the end of the project. the City must email a copy of the Exhibit 9-P to DBE.Forms@dot.ca.gov before the end of the month after receiving the Exhibit 9-P from the Consultant.

J. The total amount payable by City, for all cost associated with this Agreement, including but not limited to the fixed fee, transportation, and subsistence, shall not exceed \$10,200,000.

K. Salary increases will be reimbursable if the new salary is within the salary range identified in the approved Cost Proposal and is approved by the Contract Administrator. For personnel subject to prevailing wage rates as described in the California Labor Code, all salary increases, which are the direct result of changes in the prevailing wage rates are reimbursable.

8. Cost Principles and Administrative Requirements.

A. Consultant agrees that the Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 *et seq.*, shall be used to determine the cost allowability of individual items.

B. Consultant and subconsultants also agrees to comply with federal procedures in accordance with 2 CFG Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards and 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

C. Any costs for which payment has been made to Consultant that are determined by subsequent audit to be unallowable under 49 CFR, Part 18, 2 CFR Part 200 and 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 *et seq.*, are subject to repayment by Consultant to City.

D. Consultant and subconsultants shall establish and maintain an accounting system and records that properly accumulate and segregate incurred project costs and matching funds by line item for the project. The accounting system shall conform to Generally Accepted Accounting Principles, enable the determination of incurred costs at interim points of completion, and provide support for reimbursement payment vouchers or invoices sent to or paid by City.

9. Ownership of Documents and Data.

A. The written documents, data, and materials prepared by Consultant, in connection with the performance of its duties under this Agreement, shall be the sole property of City. Upon completion of all work under this Agreement, ownership and title to all reports, documents, data, plans, specifications, estimates, and materials produced as part of this Agreement will automatically be vested in City; no further agreement will be necessary to transfer ownership to City. Consultant shall furnish City all necessary copies of documents, data, and materials needed to complete the review and approval process.

B. City shall not be limited in any way in its use or reuse of the documents, data, and materials or any part of them at any time for purposes of the Project covered under this Agreement, or another project. Notwithstanding the foregoing, Consultant shall not be liable for claims, liabilities, or losses arising out of or connected with the modification or misuse by City of the machine-readable information and data provided by Consultant under this Agreement. Further, Consultant is not liable for claims, liabilities, or losses arising out of or connected with any use by City of the Project documentation on other projects. Consultant shall be responsible and liable for its documents, data, and materials pursuant to the terms of this Agreement, only with respect to the condition of the documents, data, and materials at the time they are provided to the City upon completion, suspension, abandonment, or termination. Consultant shall not be responsible or liable for any revisions to the documents, data, and materials made by any party other than Consultant, a party for whom the Consultant is legally responsible or liable, or anyone approved by the Consultant.

C. FHWA shall have the royalty-free nonexclusive and irrevocable right to reproduce, publish, or otherwise use and to authorize others to use the work, for federally funded projects, for government purposes.

10. Retention of Records and Audits.

For the purpose of determining compliance with Public Contract Code 10115 *et seq.* and Title 21, California Code of Regulations, Chapter 21, Section 2500 *et seq.*, when applicable and other matters connected with the performance of the Agreement pursuant to Government Code 8546.7, Consultant, subconsultants, and City shall maintain and make available for inspection all books, documents, papers, accounting records, and other evidence pertaining to the performance of the Agreement, including but not limited to, the costs of administering the Agreement. All Parties, including the Consultant's independent CPA, shall make such materials available at their respective offices at all reasonable times during the Agreement period and for three (3) years from the date of final payment under the Agreement and records for real property and equipment acquired with federal funds must be retained for three (3) years after final disposition. The State,

State Auditor, City, FHWA, or any duly authorized representative of the Federal Government having jurisdiction under Federal laws or regulations (including the basis of Federal funding in whole or in part) having shall have access to any books, records, and documents of Consultant, subconsultants, and its certified public accountants (“CPA”) work papers that are pertinent to the Agreement and indirect cost rates (“ICR”) for audit, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested without limitation.

11. Audit Review Procedures.

A. Any dispute concerning a question of fact arising under an interim or post audit of this Agreement that is not disposed of by agreement between the Parties, shall be reviewed by City’s Administrative Services Director.

B. Not later than thirty (30) days after issuance of the final audit report, Consultant may request a review by the Administrative Services Director of unresolved audit issues. The request for review must be submitted in writing.

C. Neither the pendency of a dispute nor its consideration by City will excuse Consultant from full and timely performance, in accordance with the terms of this Agreement.

D. Consultant and subconsultant contracts, including cost proposals and ICR, are subject to audits or reviews such as, but not limited to, a contract audit, an incurred cost audit, an ICR audit, or a CPA ICR audit work paper review. If selected for audit or review, the contract, cost proposal, ICR, and related work papers, if applicable, will be reviewed to verify compliance with 48 CFR, Part 31 and other related laws and regulations. In the instances of a CPA ICR audit work paper review it is Consultant’s responsibility to ensure federal, state, or local government officials are allowed full access to the CPA’s work papers including making copies as necessary. The contract, cost proposal, and ICR shall be adjusted by Consultant and approved by the Project Director to conform to the audit or review recommendations. Consultant agrees that individual terms of costs identified in the audit report shall be incorporated into the Agreement by this reference if directed by City at its sole discretion. Refusal by Consultant to incorporate audit or review recommendations, or to ensure that the federal, state or local governments have access to CPA work papers, will be considered a breach of Agreement terms and cause for termination of the Agreement and disallowance of prior reimbursed costs.

E. Consultant’s Cost Proposal may be subject to a CPA ICR Audit Work Paper Review and/or audit by the Independent Office of Audits and Investigations (IOAI). IOAI, at its sole discretion, may review and/or audit and approve the CPA ICR documentation. The Cost Proposal shall be adjusted by the Consultant and approved by the City Contract Administrator to conform to the Work Paper Review recommendations included in the management letter or audit recommendations included in the audit report. Refusal by the Consultant to incorporate the Work Paper Review recommendations included in the management letter or audit recommendations included in the audit report will be considered a breach of the Agreement terms and cause for termination of the Agreement and disallowance of prior reimbursed costs.

1. During IOAI's review of the ICR audit work papers created by the Consultant's independent CPA, IOAI will work with the CPA and/or Consultant toward a resolution of issues that arise during the review. Each party agrees to use its best efforts to resolve any audit disputes in a timely manner. If IOAI identifies significant issues during the review and is unable to issue a cognizant approval letter, City will reimburse the Consultant at an accepted ICR until a FAR (Federal Acquisition Regulation) compliant ICR {e.g. 48 CFR Part 31; GAGAS (Generally Accepted Auditing Standards); CAS (Cost Accounting Standards), if applicable; in accordance with procedures and guidelines of the American Association of State Highways and Transportation Officials (AASHTO) Audit Guide; and other applicable procedures and guidelines} is received and approved by IOAI. Accepted rates will be as follows:

- a. If the proposed rate is less than one hundred fifty percent (150%) - the accepted rate reimbursed will be ninety percent (90%) of the proposed rate.
- b. If the proposed rate is between one hundred fifty percent (150%) and two hundred percent (200%) - the accepted rate will be eighty-five percent (85%) of the proposed rate.
- c. If the proposed rate is greater than two hundred percent (200%) - the accepted rate will be seventy-five percent (75%) of the proposed rate.

2. If IOAI is unable to issue a cognizant letter per paragraph E.1. above, IOAI may require Consultant to submit a revised independent CPA-audited ICR and audit report within three (3) months of the effective date of the management letter. IOAI will then have up to six (6) months to review the Consultant's and/or the independent CPA's revisions.

3. If the Consultant fails to comply with the provisions of this paragraph E, or if IOAI is still unable to issue a cognizant approval letter after the revised independent CPA audited ICR is submitted, overhead cost reimbursement will be limited to the accepted ICR that was established upon initial rejection of the ICR and set forth in paragraph E.1. above for all rendered services. In this event, this accepted ICR will become the actual and final ICR for reimbursement purposes under this Agreement.

4. Consultant may submit to City final invoice only when all of the following items have occurred: (1) IOAI accepts or adjusts the original or revised independent CPA audited ICR; (2) all work under this Agreement has been completed to the satisfaction of City; and, (3) IOAI has issued its final ICR review letter. The CONSULTANT MUST SUBMIT ITS FINAL INVOICE TO CITY no later than sixty (60) calendar days after occurrence of the last of these items. The accepted ICR will apply to this Agreement and all other agreements executed between City and the Consultant, either as a prime or subconsultant, with the same fiscal period ICR.

12. Representations of Consultant. City relies upon the following representations by Consultant in entering into this Agreement:

A. Qualifications. Consultant represents that it is qualified to perform the Services and that it possesses the necessary licenses, permits, and registrations required to perform the Services or will obtain such licenses or permits prior to the time such licenses or permits are

required. Consultant represents and warrants to City that Consultant shall, at Consultant's sole cost and expense, keep in effect or obtain at all times during the Term of this Agreement, any licenses, permits, and registrations that are legally required for Consultant to practice Consultant's profession at the time the Services are rendered. Engineers under engineering consultant contracts must be a registered engineer with the State of California. Consultant shall obtain and maintain a City of Sonora Business License for the term of this Agreement.

B. Consultant Performance. Consultant represents and warrants that all Services under this Agreement shall be performed in a professional manner and shall conform to the customs and standards of practice observed on similar, successfully completed projects by specialists in the Services to be provided. Consultant shall adhere to accepted professional standards as set forth by relevant professional associations and shall perform all Services required under this Agreement in a manner consistent with generally accepted professional customs, procedures, and standards for such Services. All work or products completed by Consultant shall be completed using the best practices available for the profession and shall be free from any defects. Consultant agrees that, if a Service is not so performed, in addition to all of its obligations under this Agreement and at law, Consultant shall re-perform or replace unsatisfactory Service at no additional expense to City.

13. Safety.

A. Consultant shall comply with OSHA regulations applicable to Consultant regarding necessary safety equipment or procedures. Consultant shall comply with safety instructions issued by the Contract Administrator and other City representatives. Consultant's personnel shall wear hard hats and safety vests at all times while working on the construction Project site. If a death, serious personal injury, or substantial property damage occurs in connection with the performance under this Agreement, Consultant shall immediately notify the Contract Administrator and promptly submit a written report to the Contract Administrator including the date, time and location of the incident, a detailed description of the incident, and name and address of all parties involved in the incident.

B. Pursuant to the authority contained in Section 591 of the Vehicle Code, City has determined that such areas are within the limits of the Project and are open to public traffic. Consultant shall comply with all of the requirements set forth in Divisions 11, 12, 13, 14, and 15 of the Vehicle Code. Consultant shall take all reasonably necessary precautions for safe operation of its vehicles and the protection of the traveling public from injury and damage from such vehicles.

C. If the Project will require trenching of five (5) feet or deeper, Consultant must have a Division of Occupational Safety and Health (CAL-OSHA) permit(s), as outlined in California Labor Code Sections 6500 and 6705, prior to the initiation of any practices, work, method, operation, or process related to the construction or excavation of trenches which are five feet or deeper.

D. Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this Section.

14. Subcontracting.

A. Nothing contained in this Agreement or otherwise shall create any contractual relation between City and any subconsultant(s). No subcontract shall relieve Consultant of its responsibilities and obligations hereunder. Consultant agrees to be as fully responsible to City for the acts and omissions of its subconsultant(s) and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by Consultant. Consultant's obligation to pay its subconsultant(s) is an independent obligation from City's obligation to make payments to Consultant.

B. Consultant shall perform the work contemplated with resources available within its own organization and no portion of the work pertinent to this Agreement shall be subcontracted without written authorization by the Contract Administrator, except that, which is expressly identified in the approved Services and Cost Proposal, as provided in **Exhibit A and B**.

C. Consultant shall pay its subconsultants within fifteen (15) calendar days from receipt of each payment made to Consultant by City.

D. All subcontracts entered into as a result of this Agreement shall contain all the provisions stipulated in this Agreement to be applicable to subconsultants.

E. Any substitution of subconsultant(s) must be approved in writing by the Contract Administrator prior to the start of work by the subconsultant(s).

F. Prompt Progress Payment

Consultant or subconsultant shall pay to any subconsultant, not later than fifteen (15) days after receipt of each progress payment, unless otherwise agreed to in writing, the respective amounts allowed Consultant on account of the work performed by the subconsultants, to the extent of each subconsultant's interest therein. In the event that there is a good faith dispute over all or any portion of the amount due on a progress payment from Consultant or subconsultant to a subconsultant, Consultant or subconsultant may withhold no more than 150 percent of the disputed amount. Any violation of this requirement shall constitute a cause for disciplinary action and shall subject the licensee to a penalty, payable to the subconsultant, of 2 percent of the amount due per month for every month that payment is not made.

In any action for the collection of funds wrongfully withheld, the prevailing party shall be entitled to his or her attorney's fees and costs. The sanctions authorized under this requirement shall be separate from, and in addition to, all other remedies, either civil, administrative, or criminal. This clause applies to both DBE and non-DBE subconsultants.

G. Any subcontract entered into as a result of the Agreement shall contain the following provision:

The City shall hold retainage from Consultant and shall make prompt and regular incremental acceptances of portions, as determined by the City of the contract work and pay retainage to Consultant based on these acceptances. Consultant or subconsultant shall return all monies withheld in retention from all subconsultants within 15 days after receiving payment for work

satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the City. Any delay or postponement of payment may take place only for good cause and with the City's prior written approval. Any violation of these provisions shall subject the violating Consultant or subconsultant to the penalties, sanctions, and other remedies specified in Section 3321 of the California Civil Code. This requirement shall not be construed to limit or impair any contractual, administrative or judicial remedies otherwise available to Consultant or subconsultant in the event of a dispute involving late payment or nonpayment by Consultant; deficient subconsultant performance and/or noncompliance by a subconsultant. This clause applies to both DBE and non-DBE subconsultants.

Any violation of these provisions shall subject the violating Consultant or subconsultant to the penalties, sanctions and other remedies specified therein. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to Consultant or subconsultant in the event of a dispute involving late payment or nonpayment by Consultant, deficient subcontract performance, or noncompliance by a subconsultant.

15. Equipment Purchase.

A. Prior authorization in writing by the Contract Administrator shall be required before Consultant enters into any unbudgeted purchase order, or subcontract exceeding five thousand dollars (\$5,000) for supplies, equipment, or consultant services. Consultant shall provide an evaluation of the necessity or desirability of incurring such costs.

B. For purchase of any item, service, or consulting work not covered in Consultant's Cost Proposal and exceeding five thousand dollars (\$5,000) and prior to authorization by the Contract Administrator, three (3) competitive quotations must be submitted with the request or the absence of bidding must be adequately justified.

C. Any equipment purchased as a result of this Agreement is subject to the following: "Consultant shall maintain an inventory of all nonexpendable property. Nonexpendable property is defined as having a useful life of at least two (2) years and an acquisition cost of five thousand dollars (\$5,000) or more. If the purchased equipment needs replacement and is sold or traded in, City shall receive a proper refund or credit at the conclusion of the Agreement, or if the Agreement is terminated, Consultant may either keep the equipment and credit City in an amount equal to its fair market value, or sell such equipment at the best price obtainable at a public or private sale, in accordance with established City procedures and credit City in an amount equal to the sales price. If Consultant elects to keep the equipment, fair market value shall be determined at Consultant's expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to City and Consultant, if Consultant is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by City." 49 CFR, Part 18 and 2 CFR Part 200 requires a credit to Federal funds when participating equipment with a fair market value greater than five thousand dollars (\$5,000) is credited to the project.

16. State Prevailing Wage Rates.

A. Consultant shall be solely responsible for complying with California's General Prevailing Wage Rate requirements in accordance with California Labor Code, Section 1770, and all federal, state, and local laws and ordinances applicable to the work.

B. No Consultant or subconsultant may be awarded an Agreement containing public work elements unless registered with the Department of Industrial Relations (DIR) pursuant to Labor Code §1725.5. Registration with DIR must be maintained throughout the entire term of this Agreement, including any subsequent amendments.

C. When prevailing wages apply to the Services described in the Statement of Work, attached hereto as **Exhibit A**, transportation and subsistence costs shall be reimbursed at the minimum rates set by the Department of Industrial Relations as outlined in the applicable Prevailing Wage Determination. See <http://www.dir.ca.gov>.

D. The Consultant shall comply with all of the applicable provisions of the California Labor Code requiring the payment of prevailing wages. The General Prevailing Wage Rate Determinations applicable to work under this Agreement are available and on file with the Department of Transportation's Regional/District Labor Compliance Officer (<https://dot.ca.gov/programs/construction/labor-compliance>). General Prevailing Wage Rate Determinations applicable to this project may also be obtained from the Department of Industrial Relations website at <http://www.dir.ca.gov>. These wage rates are made a specific part of this Agreement by reference pursuant to Labor Code §1773.2 and will be applicable to work performed at a construction project site. Prevailing wages will be applicable to all inspection work performed at City construction sites, at City facilities and at off-site locations that are set up by the construction contractor or one of its subcontractors solely and specifically to serve City projects. Prevailing wage requirements do not apply to inspection work performed at the facilities of vendors and commercial materials suppliers that provide goods and services to the general public.

E. Payroll Records

1. Consultant and subconsultant shall keep accurate certified payroll records and supporting documents as mandated by Labor Code §1776 and as defined in 8 CCR §16000 showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by the Consultant or subconsultant in connection with the public work. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:

a. The information contained in the payroll record is true and correct.

b. The employer has complied with the requirements of Labor Code §1771, §1811, and §1815 for any work performed by his or her employees on the public works project.

2. The payroll records enumerated under paragraph (1) above shall be certified as correct by the Consultant under penalty of perjury. The payroll records and all supporting documents shall be made available for inspection and copying by City representatives at all reasonable hours at the principal office of the Consultant. The Consultant shall provide copies of certified payrolls or permit inspection of its records as follows:

a. A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or the employee's authorized representative on request.

b. A certified copy of all payroll records enumerated in paragraph (1) above, shall be made available for inspection or furnished upon request to a representative of City, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards of the Department of Industrial Relations. Certified payrolls submitted to City, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards shall not be altered or obliterated by the Consultant.

c. The public shall not be given access to certified payroll records by the Consultant. The Consultant is required to forward any requests for certified payrolls to the City Contract Administrator by both email and regular mail on the business day following receipt of the request.

3. Consultant shall submit a certified copy of the records enumerated in paragraph (1) above, to the entity that requested the records within ten (10) calendar days after receipt of a written request.

4. Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by City shall be marked or obliterated in such a manner as to prevent disclosure of each individual's name, address, and social security number. The name and address of the Consultant or Subconsultant performing the work shall not be marked or obliterated.

5. The Consultant shall inform City of the location of the records enumerated under paragraph (1) above, including the street address, city and county, and shall, within five (5) working days, provide a notice of a change of location and address.

6. The Consultant or subconsultant shall have ten (10) calendar days in which to comply subsequent to receipt of written notice requesting the records enumerated in paragraph (1) above. In the event the Consultant or subconsultant fails to comply within the ten (10) day period, he or she shall, as a penalty to City, forfeit one hundred dollars (\$100) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Such penalties shall be withheld by City from payments then due. Consultant is not subject to a penalty assessment pursuant to this section due to the failure of a subconsultant to comply with this section.

F. When prevailing wage rates apply, the Consultant is responsible for verifying compliance with certified payroll requirements. Invoice payment will not be made until the invoice is approved by the City Contract Administrator.

G. Penalty

1. The Consultant and any of its subconsultants shall comply with Labor Code §1774 and §1775. Pursuant to Labor Code §1775, the Consultant and any subconsultant shall forfeit to the City a penalty of not more than two hundred dollars (\$200) for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the Director of DIR for the work or craft in which the worker is employed for any public work done under the Agreement by the Consultant or by its subconsultant in violation of the requirements of the Labor Code and in particular, Labor Code §§1770 to 1780, inclusive.

2. The amount of this forfeiture shall be determined by the Labor Commissioner and shall be based on consideration of mistake, inadvertence, or neglect of the Consultant or subconsultant in failing to pay the correct rate of prevailing wages, or the previous record of the Consultant or subconsultant in meeting their respective prevailing wage obligations, or the willful failure by the Consultant or subconsultant to pay the correct rates of prevailing wages. A mistake, inadvertence, or neglect in failing to pay the correct rates of prevailing wages is not excusable if the Consultant or subconsultant had knowledge of the obligations under the Labor Code. The Consultant is responsible for paying the appropriate rate, including any escalations that take place during the term of the Agreement.

3. In addition to the penalty and pursuant to Labor Code §1775, the difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by the Consultant or subconsultant.

4. If a worker employed by a subconsultant on a public works project is not paid the general prevailing per diem wages by the subconsultant, the prime Consultant of the project is not liable for the penalties described above unless the prime Consultant had knowledge of that failure of the subconsultant to pay the specified prevailing rate of wages to those workers or unless the prime Consultant fails to comply with all of the following requirements:

- a. The Agreement executed between the Consultant and the subconsultant for the performance of work on public works projects shall include a copy of the requirements in Labor Code §§ 1771, 1775, 1776, 1777.5, 1813, and 1815.
- b. The Consultant shall monitor the payment of the specified general prevailing rate of per diem wages by the subconsultant to the employees by periodic review of the certified payroll records of the subconsultant.
- c. Upon becoming aware of the subconsultant's failure to pay the specified prevailing rate of wages to the subconsultant's workers, the Consultant shall diligently take corrective action to halt or rectify the failure, including but not limited to, retaining sufficient funds due the Subconsultant for work performed on the public works project.
- d. Prior to making final payment to the subconsultant for work performed on the public works project, the Consultant shall obtain an affidavit signed under penalty

of perjury from the subconsultant that the subconsultant had paid the specified general prevailing rate of per diem wages to the subconsultant's employees on the public works project and any amounts due pursuant to Labor Code §1813.

5. Pursuant to Labor Code §1775, City shall notify the Consultant on a public works project within fifteen (15) calendar days of receipt of a complaint that a subconsultant has failed to pay workers the general prevailing rate of per diem wages.

6. If City determines that employees of a Subconsultant were not paid the general prevailing rate of per diem wages and if City did not retain sufficient money under the Agreement to pay those employees the balance of wages owed under the general prevailing rate of per diem wages, the Consultant shall withhold an amount of moneys due the subconsultant sufficient to pay those employees the general prevailing rate of per diem wages if requested by City.

H. Hours of Labor

Eight (8) hours labor constitutes a legal day's work. The Consultant shall forfeit, as a penalty to the City, twenty-five dollars (\$25) for each worker employed in the execution of the Agreement by the Consultant or any of its subconsultants for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week in violation of the provisions of the Labor Code, and in particular §§1810 to 1815 thereof, inclusive, except that work performed by employees in excess of eight (8) hours per day, and forty (40) hours during any one week, shall be permitted upon compensation for all hours worked in excess of eight (8) hours per day and forty (40) hours in any week, at not less than one and one-half (1.5) times the basic rate of pay, as provided in §1815.

I. Employment of Apprentices

1. Where either the prime Agreement or the subagreement exceeds thirty thousand dollars (\$30,000), the Consultant and any subconsultants under him or her shall comply with all applicable requirements of Labor Code §§ 1777.5, 1777.6 and 1777.7 in the employment of apprentices.

2. Consultant and subconsultants are required to comply with all Labor Code requirements regarding the employment of apprentices, including mandatory ratios of journey level to apprentice workers. Prior to commencement of work, Consultant and subconsultants are advised to contact the DIR Division of Apprenticeship Standards website at <https://www.dir.ca.gov/das/>, for additional information regarding the employment of apprentices and for the specific journey-to-apprentice ratios for the Agreement work. The Consultant is responsible for all subconsultants' compliance with these requirements. Penalties are specified in Labor Code §1777.7.

17. Conflict of Interest.

A. Consultant shall disclose any financial, business, or other relationship with City that may have an impact upon the outcome of this Agreement or any ensuing City construction project. Consultant shall also list current clients who may have a financial interest in the outcome of this Agreement or any ensuing City construction project which will follow.

B. Consultant certifies that it has disclosed to City any actual, apparent, or potential conflicts of interest that may exist relative to the services to be provided pursuant to this Agreement. Consultant agrees to advise City of any actual, apparent or potential conflicts of interest that may develop subsequent to the date of execution of this Agreement. Consultant further agrees to complete any statements of economic interest if required by either City ordinance or State law.

C. Consultant hereby certifies that it does not now have, nor shall it acquire, any financial or business interest that would conflict with the performance of the Services under this Agreement.

D. Consultant hereby certifies that neither Consultant, nor any firm affiliated with Consultant will bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this Agreement. An affiliated firm is one which is subject to the control of the same persons through joint-ownership or otherwise.

18. Rebates, Kickbacks, or other Unlawful Consideration. Consultant warrants that this Agreement was not obtained or secured through rebates kickbacks or other unlawful consideration, either promised or paid to any City employee. For breach or violation of this warranty, City shall have the right, in its discretion, to terminate the Agreement without liability, to pay only for the value of the work actually performed, to deduct from the Agreement price, or otherwise recover the full amount of such rebate, kickback, or other unlawful consideration.

19. Contingent Fee. Consultant warrants, by execution of this Agreement, that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by Consultant for the purpose of securing business. For breach or violation of this warranty, City has the right to annul this Agreement without liability, pay only for the value of the work actually performed, or, in its discretion, to deduct from the contract price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

20. Prohibition of Expending Local Agency State or Federal Funds for Lobbying.

A. Consultant certifies to the best of his or her knowledge and belief that:

1. No state, federal, or local agency appropriated funds have been paid or will be paid by-or-on behalf of Consultant to any person for influencing or attempting to influence an officer or employee of any state or federal agency, a Member of the State Legislature or United States Congress, an officer or employee of the Legislature or Congress, or any employee of a Member of the Legislature or Congress in connection with the awarding of any state or federal contract, the making of any state or federal grant, the making of any state or federal loan, the entering into of any cooperative agreement and the extension, continuation, renewal, amendment, or modification of any state or federal contract, grant, loan, or cooperative agreement.

2. If any funds, other than federal appropriated funds, have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, Consultant shall complete and submit Standard Form-LLL "Disclosure Form to Report Lobbying," in accordance with its instructions.

B. This certification is a material representation of fact upon which reliance was placed when this Agreement was made or entered into. Submission of this certification is a prerequisite for making or entering into this Agreement imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than ten thousand dollars (\$10,000) and not more than one hundred thousand dollars (\$100,000) for each such failure.

C. Consultant also agrees by signing this Agreement that he or she shall require that the language of this certification be included in all lower-tier subcontracts, which exceed one hundred thousand dollars (\$100,000) and that all such sub-recipients shall certify and disclose accordingly.

21. Statement of Compliance.

A. Consultant's signature affixed herein, and dated, shall constitute a certification under penalty of perjury under the laws of the State of California that Consultant has, unless exempt, complied with the nondiscrimination program requirements of Government Code Section 12990 and Title 2, California Administrative Code, Section 8103. Consultant will also comply with all provisions included within the attached Exhibit C & D.

B. During the performance of this Agreement, Consultant and its subconsultants shall not deny the Agreement's benefits to any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, nor shall they unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. Consultant and subconsultants shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.

C. Consultant and subconsultants shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) *et seq.*) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 *et seq.*). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full.

D. Consultant shall permit access by representatives of the Department of Fair Employment and Housing and the City upon reasonable notice at any time during the normal business hours, but in no case less than twenty-four (24) hours' notice, to such of its books, records, accounts, and all other sources of information and its facilities as said Department or City shall require to ascertain compliance with this clause.

E. Consultant and its subconsultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

F. Consultant shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this Agreement.

G. The Consultant, with regard to the work performed under this Agreement, shall act in accordance with Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d et seq.). Title VI provides that the recipients of federal assistance will implement and maintain a policy of nondiscrimination in which no person in the United States shall, on the basis of race, color, national origin, religion, sex, age, disability, be excluded from participation in, denied the benefits of or subject to discrimination under any program or activity by the recipients of federal assistance or their assignees and successors in interest.

H. The Consultant shall comply with regulations relative to non-discrimination in federally-assisted programs of the U.S. Department of Transportation (49 CFR Part 21 - Effectuation of Title VI of the Civil Rights Act of 1964). Specifically, the Consultant shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR §21.5, including employment practices and the selection and retention of subconsultants.

I. Consultant, subrecipient or subconsultant will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR 26 on the basis of race, color, sex, or national origin. In administering the City components of the DBE Program Plan, CONSULTANT, subrecipient or subconsultant will not, directly, or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE Program Plan with respect to individuals of a particular race, color, sex, or national origin.

22. Debarment and Suspension of Certificate.

A. Consultant's signature affixed herein shall constitute a certification under penalty of perjury under the laws of the state of California that Consultant or any person associated therewith in the capacity of owner, partner, director, officer, or manager:

1. Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency,

2. Has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years,

3. Does not have a proposed debarment pending, and

4. Has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years.

B. Any exceptions to this certification must be disclosed to City. Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining Consultant responsibility. Disclosures must indicate to whom exceptions apply, initiating agency, and dates of action.

C. Exceptions to the Federal Government excluded parties (<https://sam.gov/content/home>) maintained by the U.S. General Services Administration are to be determined by FHWA.

23. Funding Requirements.

A. It is mutually understood between the parties that this Agreement may have been written before ascertaining the availability of funds or appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays that would occur if the Agreement were executed after that determination was made.

B. This Agreement is valid and enforceable only, if sufficient funds are made available to City for the purpose of this Agreement. In addition, this Agreement is subject to any additional restrictions, limitations, conditions, or any statute enacted by the Congress, State Legislature, or City Council that may affect the provisions, terms, or funding of this Agreement in any manner.

C. It is mutually agreed that if sufficient funds are not appropriated, this Agreement may be amended to reflect any reduction in funds.

D. City has the option to void the contract under the 30-day termination clause pursuant to Section 5, or by mutual agreement to amend the Agreement to reflect any reduction of funds.

24. Disadvantaged Business Enterprises Participation

A. Consultant, subrecipient (City), or subconsultant shall take necessary and reasonable steps to ensure that DBEs have opportunities to participate in the contract (49 CFR 26). To ensure equal participation of DBEs provided in 49 CFR 26.5, The City shows a contract goal for DBEs. Consultant shall make work available to DBEs and select work parts consistent with available DBE subconsultants and suppliers.

Consultant shall meet the DBE goal shown elsewhere in these special provisions or demonstrate that they made adequate good faith efforts to meet this goal. It is Consultant's responsibility to verify at date of proposal opening that the DBE firm is certified as a DBE by using the California Unified Certification Program (CUCP) database and possesses the most specific available North American Industry Classification System (NAICS) codes or work code

applicable to the type of work the firm will perform on the contract. Additionally, the Consultant is responsible to document the verification record by printing out the CUCP data for each DBE firm. A list of DBEs certified by the CUCP can be found at <https://dot.ca.gov/programs/civil-rights/dbe-search>.

All DBE participation will count toward the California Department of Transportation's federally mandated statewide overall DBE goal. Credit for materials or supplies Consultant purchases from DBEs counts towards the goal in the following manner:

- 100 percent counts if the materials or supplies are obtained from a DBE manufacturer.
- 60 percent counts if the materials or supplies are purchased from a DBE regular dealer.
- Only fees, commissions, and charges for assistance in the procurement and delivery of materials or supplies count if obtained from a DBE that is neither a manufacturer nor regular dealer. 49CFR26.55 defines "manufacturer" and "regular dealer."

This Agreement is subject to 49 CFR Part 26 entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs". Consultants who enter into a federally-funded agreement will assist the City in a good faith effort to achieve California's statewide overall DBE goal

B. The goal for DBE participation for this Agreement is **17%**. Participation by DBE Consultant or subconsultants shall be in accordance with information contained in Exhibit 10-O2: Consultant Contract DBE Commitment attached hereto, under **Exhibit E**, and incorporated as part of the Agreement. If a DBE subconsultant is unable to perform, Consultant must make a good faith effort to replace him/her with another DBE subconsultant, if the goal is not otherwise met.

C. Consultant can meet the DBE participation goal by either documenting commitments to DBEs to meet the Agreement goal, or by documenting adequate good faith efforts to meet the Agreement goal. An adequate good faith effort means that the Consultant must show that it took all necessary and reasonable steps to achieve a DBE goal that, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to meet the DBE goal. If Consultant has not met the DBE goal, complete and submit Exhibit 15-H: DBE Information – Good Faith Efforts to document efforts to meet the goal. Refer to 49 CFR Part 26 for guidance regarding evaluation of good faith efforts to meet the DBE goal.

D. Contract Assurance

Under 49 CFR 26.13(b):

Consultant, subrecipient or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. Consultant shall carry out applicable requirements of 49 CFR 26 in the award and administration of federal-aid contracts.

Failure by the Consultant to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying Consultant from future proposing as non-responsible.

E. Termination and Replacement of DBE Subconsultants

Consultant shall utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless Consultant or DBE subconsultant obtains the City's written consent. Consultant shall not terminate or replace a listed DBE for convenience and perform the work with their own forces or obtain materials from other sources without authorization from the City. Unless the City's consent is provided, the Consultant shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE on the Exhibit 10-02 Consultant Contract DBE Commitment form, included in the Agreement

Termination of DBE Subconsultants

After execution of the Agreement, termination of a DBE may be allowed for the following, but not limited to, justifiable reasons with prior written authorization for the City:

1. Listed DBE fails or refuses to execute a written contract based on plans and specifications for the project.
2. The City stipulated that a bond is a condition of executing the subcontract and the listed DBE fails to meet the City's bond requirements.
3. Work requires a consultant's license and listed DBE does not have a valid license under Contractors License Law.
4. Listed DBE fails or refuses to perform the work or furnish the listed materials (failing or refusing to perform is not an allowable reason to remove a DBE if the failure or refusal is a result of bad faith or discrimination).
5. Listed DBE's work is unsatisfactory and not in compliance with the contract.
6. Listed DBE is ineligible to work on the project because of suspension or debarment.
7. Listed DBE becomes bankrupt or insolvent or exhibits credit unworthiness.
8. Listed DBE voluntarily withdraws with written notice from the Contract.
9. Listed DBE is ineligible to receive credit for the type of work required.
10. Listed DBE owner dies or becomes disabled resulting in the inability to perform the work on the Contract.

11. The City determines other documented good cause.

Consultant must use the following procedures to request the termination of a DBE or portion of a DBE's work:

1. Send a written notice to the DBE of the Consultant's intent to use other forces or material sources and include one or more justifiable reasons listed above. Simultaneously send a copy of this written notice to the City. The written notice to the DBE must request they provide any response within five (5) business days to both the Consultant and the City by either acknowledging their agreement or documenting their reasoning as to why the use of other forces or sources of materials should not occur.
2. If the DBE does not respond within five (5) business days, Consultant may move forward with the request as if the DBE had agreed to Consultant's written notice.
3. Submit Consultant's DBE termination request by written letter to the City and include:
 - One or more listed justifiable reasons along with supporting documentation.
 - Consultant's written notice to the DBE regarding the request, including proof of transmission and tracking documentation of Consultant's written notice.
 - The DBE's response to Consultant's written notice, if received. If a written response was not provided, provide a statement to that effect.

The City shall respond in writing to the Consultant's DBE termination request within five (5) business days.

Replacement of DBE Subconsultants

After receiving the City's written authorization of DBE termination request, Consultant must obtain the City's written agreement for DBE replacement. Consultant must find or demonstrate GFE's to find qualified DBE replacement firms to perform the work to the extent needed to meet the DBE commitment.

The following procedures shall be followed to request authorization to replace a DBE firm:

1. Submit a request to replace a DBE with other forces or material sources in writing to the City which must include:
 - a. Description of remaining uncommitted work item made available for replacement DBE solicitation and participation.
 - b. The proposed DBE replacement firm's business information, the work they have agreed to perform, and the following:
 - Description of scope of work and cost proposal.
 - Proposed subcontract agreement and written confirmation of agreement to perform on the Contract.
 - Revised Exhibit 10-02: Consultant Contract DBE Commitment.
2. If Consultant has not identified a DBE replacement firm, submits documentation of Consultant's GFEs to use DBE replacement firms within seven (7) days of City's authorization to terminate the DBE. Consultant may request the City's approval to extend this submittal period to a total of 14 days. Submit documentation of actions taken to find a DBE replacement firm, such as:

- Search results of certified DBEs available to perform the original DBE work identified and or other work Consultant had intended to self-perform, to the extent needed to meet DBE commitment.
- Solicitations of DBEs for performance of work identified.
- Correspondence with interested DBEs that may have included contact details and requirements.
- Negotiation efforts with DBEs that reflect why an agreement was not reached.
- If a DBE's quote was rejected, provide reasoning for the rejection, such as why the DBE was unqualified for the work, or why the price quote was unreasonable or excessive.
- Copies of each DBE's and non-DBE's price quotes for work identified, as the City may contact the firms to verify solicitation efforts and determine if the DBE quotes are substantially higher.
- Additional documentation that supports Consultant's GFE.

The City shall respond in writing to Consultant's DBE replacement request within five (5) business days.

F. Commitment and Utilization

The City's DBE program must include a monitoring and enforcement mechanism to ensure that DBE commitments reconcile to DBE utilization. The City shall request Consultant to:

1. Notify the City's Contract Administrator or designated representative of any changes to its anticipated DBE participation
2. Provide this notification before starting the affected work
3. Maintain records including:
 - Name and business address of each 1st-tier subconsultant
 - Name and business address of each DBE subconsultant, DBE vendor, and DBE trucking company, regardless of tier
 - Date of payment and total amount paid to each business (see Exhibit 9-F Monthly Disadvantaged Business Enterprise Payment)

If Consultant is a DBE Consultant, they shall include the date of work performed by their own forces and the corresponding value of the work.

If a DBE is decertified before completing its work, the DBE must notify Consultant in writing of the decertification date. If a business becomes a certified DBE before completing its work, the business must notify Consultant in writing of the certification date. Consultant shall submit the notifications to the City. On work completion, Consultant shall complete a Disadvantaged Business Enterprises (DBE) Certification Status Change, Exhibit 17-O, form and submit the form to the City within 30 days of contract acceptance.

Upon work completion, Consultant shall complete Exhibit 17-F Final Report – Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subcontractors and submit it to the City within 90 days of contract acceptance. The City will withhold \$10,000 until the form is submitted. The City will release the withhold upon submission of the completed form.

In the City's reports of DBE participation to Caltrans, the City must display both commitments and attainments.

G. Commercially Useful Function

DBEs must perform a commercially useful function (CUF) under 49 CFR 26.55 when performing work or supplying materials listed on the DBE Commitment form. The DBE value of work will only count toward the DBE commitment if the DBE performs a CUF. A DBE performs a Commercially Useful Function (CUF) when it is responsible for execution of the work of the Agreement and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a CUF, the DBE must also be responsible, with respect to materials and supplies used on the Agreement, for negotiating price, determining quality and quantity, ordering the material and installing (where applicable), and paying for the material itself.

Consultant must perform CUF evaluation for each DBE working on a federal-aid contract, with or without a DBE goal. Perform a CUF evaluation at the beginning of the DBE's work and continue to monitor the performance of CUF for the duration of the project.

Consultant must provide written notification to the City at least 15 days in advance of each DBE's initial performance of work or supplying materials for the Contract. The notification must include the DBE's name, work the DBE will perform on the contract, and the location, date, and time of where their work will take place.

Within 10 days of DBE initially performing work or supplying materials on the Contract, Consultant shall submit to the LPA the initial evaluation and validation of DBE performance of a CUF using the LAPM 9-J: Disadvantaged Business Enterprise Commercially Useful Function Evaluation. Include the following information with the submittal:

- Subcontract agreement with the DBE
- Purchase Orders
- Bills of Lading
- Invoices
- Proof of Payment

Consultant must monitor all DBE's performance of CUF by conducting quarterly evaluations and validations throughout the duration of work on the Contract using the LAPM 9-J: DBE Commercially Useful Function Evaluation. Consultant must submit to the City these quarterly evaluations and validations by the 5th of the month for the previous three months of work.

Consultant must notify the City immediately if they believe the DBE may not be performing a CUF.

The City will verify DBEs performance of CUF by reviewing the initial and quarterly submissions of LAPM 9-J: DBE Commercially Useful Function Evaluation, submitted supporting information, field observations, and through any additional City evaluations. The City must evaluate DBEs and their CUF performance throughout the duration of a Contract. The City will provide written notice to the City and the DBE at least two (2) business days prior to any evaluation. The Consultant and the DBE must participate in the evaluation. Upon completing the evaluation, the City must share the evaluation results with the Consultant and the DBE. An evaluation could include items that must be remedied upon receipt. If the City determines the DBE is not performing a CUF, the Consultant must suspend performance of the noncompliant work.

Consultant and DBEs must submit any additional CUF related records and documents within five (5) business days of City's request such as:

- Proof of ownership or lease, and rental agreements, for equipment.
- Tax Records
- Employee Rosters
- Certified Payroll Records
- Inventory Rosters

Failure to submit required DBE Commercially Useful Function Evaluation forms or requested records and documents can result in withholding of payment for the value of work completed by the DBE.

If Consultant and/or the City determine that a listed DBE is not performing a CUF in performance of their DBE committed work, Consultant must immediately suspend performance of the noncompliant portion of the work. City may deny payment for the noncompliant portion of the work. City will ask the Consultant to submit a corrective action plan (CAP) to the City within five (5) days of the noncompliant CUF determination. The CAP must identify how the Consultant will correct the noncompliance findings for the remaining portion of the DBE's work. City has five (5) days to review the Cap in conjunction with the Consultant's review. The Consultant must implement the CAP within five (5) days of the City's approval. The city will then authorize the prior noncompliant portion of work for the DBE's committed work.

If corrective actions cannot be accomplished to ensure the DBE performs a commercially useful function on the Contract, Consultant may have good cause to request termination of the DBE.

H. A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, Agreement, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, examine similar transactions, particularly those in which DBEs do not participate.

I. If a DBE does not perform or exercise responsibility for at least thirty percent (30%) of the total cost of its Agreement with its own work force, or the DBE subcontracts a greater portion of the work of the Agreement than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that it is not performing a CUF.

J. Consultant shall maintain records of materials purchased or supplied from all subcontracts entered into with certified DBEs. The records shall show the name and business address of each DBE or vendor and the total dollar amount actually paid each DBE or vendor, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all firms. DBE Consultant's shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.

K. If a DBE subconsultant is decertified during the life of the Agreement, the decertified subconsultant shall notify Consultant in writing with the date of decertification. If a subconsultant becomes a certified DBE during the life of the Agreement, the subconsultant shall notify Consultant in writing with the date of certification. Any changes should be reported to City's Contract Administrator within thirty (30) calendar days.

L. For projects awarded on or after March 1, 2020, but before September 1, 2023, after submitting an invoice for reimbursement that includes a payment to DBE, but no later than 10th of the following month, the prime contractor/consultant must complete and email Exhibit 9-F: Disadvantaged Business Enterprise Running Tally of Payments to business.support.unit@dot.ca.gov with a copy to local administering agencies.

For projects awarded on or after September 1, 2023 Exhibit 9-F is no longer required. Instead, by the 15th of the month following the month of any payment(s), the Consultant must now submit Exhibit 9-P to the City administering the contract. If the Consultant does not make any payments to the subconsultants, supplier(s), and/or manufacturers they must report "no payments" were made to subs this month" and write this visibly and legibly on the Exhibit 9-P.

M. Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this section.

25. National Labor Relations Board Certification. In accordance with Public Contract Code section 10296, Consultant hereby states under penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued against Consultant within the immediately preceding two-year period, because of Consultant's failure to comply with an order of a federal court that orders Consultant to comply with an order of the National Labor Relations Board.

26. Inspection of Work. Consultant and any subconsultant shall permit City, the State, and the FHWA, if federal participating funds are used in this Agreement, to review and inspect the project activities and files at all reasonable times during the performance period of this Agreement including review and inspection on a daily basis.

27. Evaluation of Consultant. Consultant agrees to perform all work under this Agreement to the satisfaction of the City and as specified herein. Consultant's performance will be evaluated by City. A copy of the evaluation will be sent to Consultant. Within ten (10)

days of receipt of the evaluation, Consultant may submit comments to the evaluation. The evaluation together with the comments shall be retained as part of the Agreement record.

28. Compliance with Laws and Standards. Consultant shall insure compliance with all applicable federal, state, and local laws, ordinances, regulations and permits, including but not limited to federal, state, and county safety and health regulations. Consultant shall perform all work according to generally accepted standards within the industry. Consultant shall comply with all ordinances, laws, orders, rules, and regulations, including any administrative policies and guidelines of City pertaining to the Project or the Services.

Consultant, and subconsultants, shall establish and maintain a financial management system and records that properly accumulate and segregate reasonable, allowable, and allocable incurred Project costs by line item for the Project. The financial management system shall conform to Generally Accepted Accounting Principles, enable the determination of incurred costs at interim points of completion, and provide support for reimbursement.

29. Independent Contractor; Subcontracting. Consultant will employ, at its own expense, all personnel reasonably necessary to perform the Services. All acts of Consultant, its agents, officers, employees, and all others acting on behalf of Consultant relating to this Agreement will be performed as independent contractors. Consultant, its agents and employees will represent and conduct themselves as independent contractors and not as employees of City. Consultant has no authority to bind or incur any obligation on behalf of City. Except as City may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever. Consultant is prohibited from subcontracting this Agreement or any part of it unless such subcontracting is expressly approved by City in writing.

30. Insurance. Consultant and all of Consultant's contractors and subcontractors shall obtain and maintain insurance of the types and in the amounts described in this paragraph and its subparagraphs with carriers reasonably satisfactory to City. In the event Consultant fails to keep in effect at all times insurance coverage as herein provided, City may, in addition to any other remedies it may have, terminate this Agreement upon occurrence of such event.

A. General Liability Insurance. Consultant shall maintain occurrence version commercial general liability insurance or an equivalent form with a limit of not less than Two Million Dollars (\$2,000,000) per claim and Two Million Dollars (\$2,000,000) for each occurrence.

B. Workers' Compensation Insurance. Consultant shall carry workers' compensation insurance as required by the State of California under the Labor Code. Consultant shall also carry employer's liability insurance in the amount of One Million Dollars (\$1,000,000) per accident, with a One Million Dollar (\$1,000,000) policy limit for bodily injury or disease and a One Million Dollar (\$1,000,000) limit for each employee's bodily injury or disease.

C. Errors and Omissions Liability. Consultant shall carry errors and omissions liability insurance in the amount of no less than One Million Dollars (\$1,000,000) per occurrence or greater if appropriate for the Consultant's profession. Architects and engineers coverage is to be endorsed to include contractual liability. Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either the insurer shall reduce or eliminate such deductibles or self-insured retentions with respect to the City, elected and appointed councils, commissions, directors, officers, employees, agents, and representatives ("City's Agents") or the Consultant shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claims administration, and defense expenses.

D. Other Insurance Requirements. Within five (5) days of the Effective Date, Consultant shall provide City with certificates of insurance, including policy endorsement, for all of the policies required under this Agreement ("Certificates"), excluding the required worker's compensation insurance. Such Certificates shall be kept current for the Term of the Agreement and Consultant shall be responsible for providing updated copies and notifying City if a policy is cancelled, suspended, reduced, or voided. With the exception of the worker's compensation insurance, all of the insurance policies required in this Agreement shall: (a) provide that the policy will not be cancelled, allowed to expire, or materially reduced in coverage without at least thirty (30) days prior written notice to City of such cancellation, expiration, or reduction and each policy shall be endorsed to state such; (b) name City of Sonora, its officers, officials, employees, and volunteers as additional insureds with respect to liability arising out of the Services, work, or operations performed by or on behalf of the Consultant; products and completed operations of the Consultant; premises owned, occupied, or used by the Consultant; or automobiles owned, leased, or hired or borrowed by the Consultant. The coverage shall contain no special limitations on the scope of protection afforded to the City; (c) be primary with respect to any insurance or self-insurance programs covering City of Sonora, its officers, officials, employees, and volunteers and any insurance or self-insurance maintained by City or City's Agents shall be in excess of Consultant's insurance and shall not contribute to it; (d) contain standard separation of insured provisions; and (e) state that any failure to comply with reporting or other provisions of the policy including breaches of warranties shall not affect the coverage provided to the City.

31. Indemnification. Consultant agrees to indemnify, defend, and hold harmless City of Sonora, its officers, officials, employees, and volunteers from any and all claims, demands, costs, obligations, loss, or liability arising from or connected with the services provided hereunder due to the negligence, recklessness, willful misconduct, errors, or omissions of Consultant. Consultant will reimburse City for any expenditure, including reasonable attorney fees, incurred by City in defending against claims ultimately determined to be due to negligent acts, errors, or omissions of Consultant. Consultant's obligation to defend, indemnify, and hold City, its officers, agents, and employees harmless is not terminated by any requirement in this Agreement for Consultant to procure and maintain a policy of insurance.

32. Consequential Damages. Notwithstanding any other provision of this Agreement, in no event shall City be liable, regardless of whether any claim is based on contract or tort, for

any special, consequential, indirect, or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Agreement or the Services performed in connection with this Agreement.

33. Noninterference. Consultant will endeavor to construct the Project in a manner that will cause minimal interference to City and its residents. If, for any reason, Consultant's Services or other activities in connection with this Agreement damages City facilities, City shall notify Consultant of such damage and Consultant will undertake any and all repairs reasonably required as a result of such damage to the reasonable satisfaction of the City Administrator or his or her designee. Consultant's obligation to repair shall include repair of pre-existing condition(s) of City facilities that become problems only because they are affected or exacerbated by the work undertaken by Consultant under this Agreement. Should Consultant fail to promptly endeavor to make such repairs within thirty (30) day's notification by City, then City may endeavor to complete such repairs and submit a bill for the reasonable cost of those repairs to Consultant, which Consultant shall pay within thirty (30) days of receipt.

34. Disputes.

A. Any dispute, other than audit, concerning a question of fact arising under this Agreement that is not disposed of by agreement between the parties shall be decided by a committee consisting of the City Administrator and Contract Administrator ("Committee"), who may consider written or verbal information submitted by Consultant.

B. Not later than thirty (30) days after completion of all work under the Agreement, Consultant may request review by the City Administrator of unresolved claims or disputes, other than audit. The request for review will be submitted in writing.

C. Neither the pendency of a dispute, nor its consideration by the Committee will excuse Consultant from full and timely performance in accordance with the terms of this Agreement.

35. Claims Filed by City's Construction Contractor

A. If claims are filed by City's construction contractor relating to work performed by the Consultant's personnel, and additional information or assistance from Consultant's personnel is required in order to evaluate or defend against such claims, Consultant agrees to make its personnel available for consultation with City's construction contract administration and legal staff and for testimony, if necessary, at depositions and at trial or arbitration proceedings.

B. Consultant's personnel that City considers essential to assist in defending against construction contractor claims will be made available on reasonable notice from City. Consultation or testimony will be reimbursed at the same rates, including travel costs that are being paid for Consultant's personnel services under this Agreement.

C. Services of Consultant's personnel in connection with City construction contractor claims will be performed pursuant to a written contract amendment, if necessary, extending the termination date of this Agreement in order to resolve the construction claims.

36. Confidentiality of Data

A. All financial, statistical, personal, technical, or other data and information relative to City's operations, which are designated confidential by City and made available to Consultant in order to carry out this Agreement, shall be protected by Consultant from unauthorized use and disclosure.

B. Permission to disclose information on one occasion, or public hearing held by City relating to the Agreement, shall not authorize Consultant to further disclose such information, or disseminate the same on any other occasion.

C. Consultant shall not comment publicly to the press or any other media regarding the Agreement or City's actions on the same, except for at a public hearing or meeting in response to questions from the City Council.

D. Consultant shall not issue any news release or public relations item of any nature, whatsoever, regarding work performed or to be performed under this Agreement without prior review of the contents thereof by City, and receipt of City's written permission.

E. All information related to the construction estimate is confidential, and shall not be disclosed by Consultant to any entity other than City.

F. Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this Section.

G. All information related to the construction estimate is confidential, and shall not be disclosed by Consultant to any entity, other than the City, Caltrans, and/or FHWA. All of the materials prepared or assembled by Consultant, pursuant to the performance of this Contract are confidential and Consultant agrees that they shall not be made available to any individual or organization without the prior written approval of City or except by court order. If Consultant or any of its officers, employees, or subcontractors does voluntarily provide information in violation of this Contract, City has the right to reimbursement and indemnity from Consultant for any damages caused by Consultant releasing the information, including, but not limited to, City's attorney's fees and disbursements, including without limitation experts' fees and disbursements.

37. General Provisions.

A. **Entire Agreement.** This Agreement sets forth the entire understanding between the Parties as to the subject matter of this Agreement and merges all prior discussions, negotiations, proposal letters or other promises, whether oral or in writing.

B. **Exhibits.** All exhibits referred to herein are incorporated into this Agreement. Failure to comply with the provisions or requirements of any exhibit shall constitute grounds for breach of this Agreement by either Party.

C. Modification. No alteration, modification, or termination of this Agreement shall be valid unless made in writing and executed by all Parties. Consultant shall only commence work covered by an amendment after the amendment is executed and notification to proceed has been provided by the Contract Administrator.

D. Assignment. Consultant shall not assign this Agreement, either in whole or in part, without the written consent of City.

E. Waiver. A waiver by any Party to this Agreement or a breach of any provision shall not operate or be construed as a waiver of any other or subsequent breach hereof, unless specifically stated in writing. The subsequent acceptance by any Party of any fee, performance, or other consideration which may become due or owing under this Agreement, shall not be deemed to be a waiver of any preceding breach or violation by the other Party of any term, condition, covenant of this Agreement or any applicable law, ordinance, or regulation.

F. Necessary Acts. The Parties shall at their own cost and expense execute and deliver further documentation and shall take other actions as may be reasonably required or appropriate to carry out the intent and purposes of this Agreement.

G. No Third Party Beneficiaries. City and Consultant do not intend, by any provision of this Agreement, to create in any third party any benefit or right owed by one party, under the terms and conditions of this Agreement, to the other Party.

H. Attorney's Fees and Costs. In any action at law or in equity, including action for declaratory relief, brought by any Party to enforce or interpret the terms of this Agreement, the prevailing Party shall be entitled to recover its reasonable attorney's fees, costs of court and reasonable expense of litigation, in addition to any other relief which such party may be entitled.

I. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the state of California.

J. Venue. Venue for all legal proceedings shall be in the Superior Court of California for the County of Tuolumne.

K. Binding Agreement. This Agreement shall be binding upon and inure to the benefit of the heirs, successors, executors, administrators, and assigns of the Parties.

L. Severability. Should any provision of this Agreement be declared or be determined by any court of competent jurisdiction to be illegal, invalid, or unenforceable, the legality, validity, and enforceability of the remaining parts, terms, or provisions shall nevertheless continue in full force without being impaired or invalidated in any way.

M. Survival. All rights and obligations hereunder that by their nature are to continue after any expiration or Termination of this Agreement, including, but not limited to, the indemnification and confidentiality obligations, shall survive any such expiration or Termination of this Agreement.

If to City: City of Sonora
94 N. Washington Street
Sonora, CA 95370
Attention: City Administrator
Telephone: (209) 532-4541
Email: meads@sonoraca.org

With copies to: _____

 Attention: _____

With copies to: White Brenner LLP
1414 K Street, Third Floor
Sacramento, CA 95814
Attn: Douglas L. White, Esq.
Telephone: (916) 468-0950
Email: doug@churchwellwhite.com

If to Consultant: _____

 Attention: _____

With copies to: _____

 Attention: _____

ENGINEERING SERVICES AGREEMENT
Page 33

P. Counterparts. This Agreement may be executed in one or more counterparts and shall be binding upon the Parties, notwithstanding that the signatures of all Parties and Parties' designated representatives do not appear on the same page.

Q. Headings Not Controlling. Headings used in this Agreement are for reference purposes only and shall not be considered in construing this Agreement.

R. Recitals. The recitals set forth above are incorporated herein by this reference and made a part of this Agreement. In the event of any inconsistencies between the recitals and Sections 1 through 37 of this Agreement, Sections 1 through 37 shall control.

[Signatures on following page]

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date first written above.

CITY:

City of Sonora, a California Municipal Corporation

By: _____

Melissa Eads, City Administrator
APPROVED AS TO FORM:

Douglas L. White, City Attorney

CONSULTANT:

By: _____

EXHIBIT A

SERVICES

(Statement of Work)

EXHIBIT B
COST PROPOSAL

EXHIBIT C

APPENDICES A - E of the TITLE VI ASSURANCES

[The U.S. Department of Transportation Order No.1050.2A requires all federal-aid Department of Transportation contracts between an agency and a consultant to contain Appendices A and E of the Title VI Assurances. Include Appendices B, C, and D if applicable as shown below. In addition, the consultant must include the Title VI Assurances Appendices A and E, and if applicable Appendices B, C, and D in all subcontracts to perform work under the contract.

The clauses of Appendix B of this Assurance shall be included as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a LOCAL AGENCY.

The clauses set forth in Appendix C and Appendix D of this Assurance shall be included as a covenant running with the land, in any future deeds, leases, licenses, permits, or similar instruments entered into by the LOCAL AGENCY with other parties:

- a. for the subsequent transfer of real property acquired or improved under the applicable activity, project, or program; and*
- b. for the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, project, or program.]*

APPENDIX A

During the performance of this Agreement, the contractor, for itself, its assignees and successors in interest (hereinafter collectively referred to as CONSULTANT) agrees as follows:

- a. Compliance with Regulations: CONSULTANT shall comply with the regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the REGULATIONS), which are herein incorporated by reference and made a part of this agreement.
- b. Nondiscrimination: CONSULTANT, with regard to the work performed by it during the AGREEMENT, shall not discriminate on the grounds of race, color, sex, national origin, religion, age, or disability in the selection and retention of sub-applicants, including procurements of materials and leases of equipment. CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the agreement covers a program set forth in Appendix B of the Regulations.
- c. Solicitations for Sub-agreements, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by CONSULTANT for work to be performed under a Sub-agreement, including procurements of materials or leases of equipment, each potential sub-applicant or supplier shall be notified by CONSULTANT of the CONSULTANT'S obligations under this Agreement and the

Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

d. Information and Reports: CONSULTANT shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the recipient or FHWA to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of CONSULTANT is in the exclusive possession of another who fails or refuses to furnish this information, CONSULTANT shall so certify to the recipient or FHWA as appropriate, and shall set forth what efforts CONSULTANT has made to obtain the information.

e. Sanctions for Noncompliance: In the event of CONSULTANT's noncompliance with the nondiscrimination provisions of this agreement, the recipient shall impose such agreement sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:

i. withholding of payments to CONSULTANT under the Agreement within a reasonable period of time, not to exceed 90 days; and/or

ii. cancellation, termination or suspension of the Agreement, in whole or in part.

f. Incorporation of Provisions: CONSULTANT shall include the provisions of paragraphs (1) through (6) in every sub-agreement, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

CONSULTANT shall take such action with respect to any sub-agreement or procurement as the recipient or FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance, provided, however, that, in the event CONSULTANT becomes involved in, or is threatened with, litigation with a sub-applicant or supplier as a result of such direction, CONSULTANT may request the recipient enter into such litigation to protect the interests of the State, and, in addition, CONSULTANT may request the United States to enter into such litigation to protect the interests of the United States.

APPENDIX B

CLAUSES FOR DEEDS TRANSFERRING UNITED STATES PROPERTY

The following clauses will be included in deeds effecting or recording the transfer of real property, structures, or improvements thereon, or granting interest therein from the United States pursuant to the provisions of Assurance 4:

NOW THEREFORE, the U.S. Department of Transportation as authorized by law and upon the condition that the recipient will accept title to the lands and maintain the project constructed thereon in accordance with Title 23 U.S.C., the regulations for the administration of the preceding statute, and the policies and procedures prescribed by the FHWA of the U.S. Department of Transportation in accordance and in compliance with all requirements imposed by Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office

of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. § 2000d to 2000d-4), does hereby remise, release, quitclaim and convey unto the recipient all the right, title and interest of the U.S. Department of Transportation in and to said lands described in Exhibit A attached hereto and made a part hereof.

(HABENDUM CLAUSE)

TO HAVE AND TO HOLD said lands and interests therein unto the recipient and its successors forever, subject, however, to the covenants, conditions, restrictions and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits and will be binding on the recipient, its successors and assigns. The recipient, in consideration of the conveyance of said lands and interest in lands, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns, that (1) no person will on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over, or under such lands hereby conveyed [,] [and]* (2) that the recipient will use the lands and interests in lands and interest in lands so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations and Acts may be amended [, and (3) that in the event of breach of any of the above-mentioned non-discrimination conditions, the Department will have a right to enter or re-enter said lands and facilities on said lands, and that above described land and facilities will thereon revert to and vest in and become the absolute property of the U.S. Department of Transportation and its assigns as such interest existed prior to this instruction].*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to make clear the purpose of Title VI.)

APPENDIX C

CLAUSES FOR TRANSFER OF REAL PROPERTY ACQUIRED OR IMPROVED UNDER THE ACTIVITY, FACILITY, OR PROGRAM

The following clauses will be included in deeds, licenses, leases, permits, or similar instruments entered into by the recipient pursuant to the provisions of Assurance 7(a):

- A. The (grantee, lessee, permittee, etc. as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases add “as a covenant running with the land”] that:
 1. In the event facilities are constructed, maintained, or otherwise operated on the property described in this (deed, license, lease, permit, etc.) for a purpose for

which a U.S. Department of Transportation activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.) will maintain and operate such facilities and services in compliance with all requirements imposed by the Acts and Regulations(as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

- B. With respect to licenses, leases, permits, etc., in the event of breach of any of the above Nondiscrimination covenants, the recipient will have the right to terminate the (lease, license, permit, etc.) and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the (lease, license, permit, etc.) had never been made or issued.*
- C. With respect to a deed, in the event of breach of any of the above Non-discrimination covenants, the recipient will have the right to enter or re-enter the lands and facilities thereon, and the above described lands and facilities will there upon revert to and vest in and become the absolute property of the recipient and its assigns.*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

APPENDIX D

CLAUSES FOR CONSTRUCTION/USE/ACCESS TO REAL PROPERTY ACQUIRED UNDER THEACTIVITY, FACILITY OR PROGRAM

The following clauses will be included in deeds, licenses, permits, or similar instruments/agreements entered into by the recipient pursuant to the provisions of Assurance 7(b):

- A. The (grantee, licensee, permittee, etc., as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest ,and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add, "as a covenant running with the land") that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishings of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits or, or otherwise be subjected to discrimination, (3) that the (grantee, licensee, lessee, permittee, etc.) will use the premises in compliance with all other requirements imposed by or pursuant to the Acts and Regulations, as amended, set forth in this Assurance.
- B. With respect to (licenses, leases, permits, etc.) in the event of breach of any of the above of the above Non-discrimination covenants, the recipient will have the right to terminate the (license, permits, etc., as appropriate) and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, permit, etc., as appropriate) had never been made or issued.*

- C. With respect to deeds, in the event of breach of any of the above Non-discrimination covenants, the recipient will there upon revert to and vest in and become the absolute property of the recipient and its assigns.

APPENDIX E

During the performance of this contract, the CONSULTANT, for itself, its assignees, and successors in interest (hereinafter referred to as the “CONSULTANT”) agrees to comply with the following nondiscrimination statutes and authorities, including, but not limited to:

Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), prohibits discrimination on the basis of race, color, national origin; and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), prohibits discrimination on the basis of sex;
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 U.S.C. § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination of the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;

- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of Limited English Proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C.1681 et seq).

EXHIBIT D

CALTRANS REQUIREMENTS

CALTRANS – APPENDIX A TO EXHIBIT B

During the performance of this Agreement, Administering Agency (City of Sonora), for itself, its assignees and successors in interest (hereinafter collectively referred to as ADMINISTERING AGENCY) agrees as follows:

- (1) Compliance with Regulations: ADMINISTERING AGENCY shall comply with the regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the REGULATIONS), which are herein incorporated by reference and made a part of this Agreement.
- (2) Nondiscrimination: ADMINISTERING AGENCY, with regard to the work performed by it during the Agreement, shall not discriminate on the grounds of race, color, sex, national origin, religion, age, or disability in the selection and retention of sub-applicants, including procurements of materials and leases of equipment. ADMINISTERING AGENCY shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the REGULATIONS, including employment practices when the Agreement covers a program set forth in Appendix B of the REGULATIONS.
- (3) Solicitations for Sub-agreements, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by ADMINISTERING AGENCY for work to be performed under a Sub-agreement, including procurements of materials or leases of equipment, each potential sub-applicant or supplier shall be notified by ADMINISTERING AGENCY of the ADMINISTERING AGENCY's obligations under this Agreement and the REGULATIONS relative to nondiscrimination on the grounds of race, color, or national origin.
- (4) Information and Reports: ADMINISTERING AGENCY shall provide all information and reports required by the REGULATIONS, or directives issued pursuant thereto, and shall permit access to ADMINISTERING AGENCY's books, records, accounts, other sources of information, and its facilities as may be determined by State or FHWA to be pertinent to ascertain compliance with such REGULATIONS or directives. Where any information required of ADMINISTERING AGENCY is in the exclusive possession of another who fails or refuses to furnish this information, ADMINISTERING AGENCY shall so certify to State or the FHWA as appropriate, and shall set forth what efforts ADMINISTERING AGENCY has made to obtain the information.
- (5) Sanctions for Noncompliance: In the event of ADMINISTERING AGENCY's noncompliance with the nondiscrimination provisions of this Agreement, State shall impose such agreement sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
 - a. Withholding of payments to ADMINISTERING AGENCY under the Agreement within a reasonable period of time, not to exceed ninety (90) days; and/or

- b. Cancellation, termination or suspension of the Agreement, in whole or in part.
- (6) Incorporation of Provisions: ADMINISTERING AGENCY shall include the provisions of paragraphs (1) through (6) in every sub-agreement, including procurements of materials and leases of equipment, unless exempt by the REGULATIONS, or directives issued pursuant thereto. ADMINISTERING AGENCY shall take such action with respect to any sub-agreement or procurement as State or FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance, provided, however, that, in the event ADMINISTERING AGENCY becomes involved in, or is threatened with, litigation with a sub-applicant or supplier as a result of such direction, ADMINISTERING AGENCY may request State enter into such litigation to protect the interests of State, and , in addition ADMINISTERING AGENCY may request the United States to enter into such litigation to protect the interests of the United States.

EXHIBIT E

EXHIBIT 10-02

CONSULTANT CONTRACT DBE INFORMATION

Attachment B

Sample Cost Proposal Cost Proposal Contracts with Prevailing Wage

SAMPLE COST PROPOSAL 1

COST-PLUS-FIXED FEE OR LUMP SUM OR FIRM FIXED PRICE CONTRACTS

(DESIGN, ENGINEERING AND ENVIRONMENTAL STUDIES)

Note: Mark-ups are Not Allowed

☐ Prime Consultant ☐ Subconsultant ☐ 2nd Tier Subconsultant

Consultant _____

Project No. _____ Contract No. _____ Date _____

DIRECT LABOR

Classification/Title	Name	Hours	Actual Hourly Rate	Total
_____	_____	_____	_____	\$ 0.00
_____	_____	_____	_____	\$ 0.00
_____	_____	_____	_____	\$ 0.00
_____	_____	_____	_____	\$ 0.00

LABOR COSTS

a) Subtotal Direct Labor Costs _____ \$ 0.00

b) Anticipated Salary Increases (see page 2 for calculation) _____

c) **TOTAL DIRECT LABOR COSTS** [(a) + (b)] _____ \$ 0.00

INDIRECT COSTS

d) Fringe Benefits (Rate: 0.00%) _____ e) Total Fringe Benefits [(c) x (d)] _____ \$ 0.00

f) Overhead (Rate: 0.00%) _____ g) Overhead [(c) x (f)] _____ \$ 0.00

h) General and Administrative (Rate: 0.00%) _____ i) Gen & Admin [(c) x (h)] _____ \$ 0.00

j) **TOTAL INDIRECT COSTS** [(e) + (g) + (i)] _____ \$ 0.00

FIXED FEE

k) **TOTAL FIXED FEE** [(c) + (j)] x fixed fee 0.00%] _____ \$ 0.00

l) CONSULTANT'S OTHER DIRECT COSTS (ODC) – ITEMIZE (Add additional pages if necessary)

Description of Item	Quantity	Unit	Unit Cost	Total
Mileage Costs				\$ 0.00
Equipment Rental and Supplies				\$ 0.00
Permit Fees				\$ 0.00
Plan Sheets				\$ 0.00
Test				\$ 0.00

l) **TOTAL OTHER DIRECT COSTS** _____ \$ 0.00

m) SUBCONSULTANTS' COSTS (Add additional pages if necessary)

Subconsultant 1: _____

Subconsultant 2: _____

Subconsultant 3: _____

Subconsultant 4: _____

m) **TOTAL SUBCONSULTANTS' COSTS** _____ \$ 0.00

n) **TOTAL OTHER DIRECT COSTS INCLUDING SUBCONSULTANTS** [(l)+(m)] _____ \$ 0.00

TOTAL COST [(c) + (j) + (k) + (n)] _____ \$ 0.00

NOTES:

- Key personnel **must** be marked with an asterisk (*) and employees that are subject to prevailing wage requirements must be marked with two asterisks (**). All costs must comply with the Federal cost principles. Subconsultants will provide their own cost proposals.
- The cost proposal format shall not be amended. Indirect cost rates shall be updated on an annual basis in accordance with the consultant's annual accounting period and established by a cognizant agency or accepted by Caltrans.
- Anticipated salary increases calculation (page 2) must accompany.

SAMPLE COST PROPOSAL I
COST-PLUS-FIXED FEE OR LUMP SUM OR FIRM FIXED PRICE CONTRACTS
(CALCULATIONS FOR ANTICIPATED SALARY INCREASES)

1. Calculate Average Hourly Rate for 1st year of the contract (Direct Labor Subtotal divided by total hours)

Direct Labor Subtotal per Cost Proposal	Total Hours per Cost Proposal		Avg Hourly Rate	5 Year Contract Duration
\$250,000.00	500	=	\$50.00	Year 1 Avg Hourly Rate

2. Calculate hourly rate for all years (Increase the Average Hourly Rate for a year by proposed escalation %)

	Avg Hourly Rate		Proposed Escalation			
Year 1	\$50.00	+	2%	=	\$51.00	Year 2 Avg Hourly Rate
Year 2	\$51.00	+	2%	=	\$52.02	Year 3 Avg Hourly Rate
Year 3	\$52.02	+	2%	=	\$53.06	Year 4 Avg Hourly Rate
Year 4	\$53.06	+	2%	=	\$54.12	Year 5 Avg Hourly Rate

3. Calculate estimated hours per year (Multiply estimate % each year by total hours)

	Estimated % Completed Each Year	Total Hours per Cost Proposal		Total Hours per Year	
Year 1	20.0%	5000	=	1000	Estimated Hours Year 1
Year 2	40.0%	5000	=	2000	Estimated Hours Year 2
Year 3	15.0%	5000	=	750	Estimated Hours Year 3
Year 4	15.0%	5000	=	750	Estimated Hours Year 4
Year 5	100%	5000	=	500	Estimated Hours Year 5
Total	100%	Total	=	5000	

4. Calculate Total Costs including Escalation (Multiply Average Hourly Rate by the number of hours)

	Avg Hourly Rate (calculated above)	Estimated hours (calculated above)		Cost per Year	
Year 1	\$50.00	1000	=	\$50,000.00	Estimated Hours Year 1
Year 2	\$51.00	2000	=	\$102,000.00	Estimated Hours Year 2
Year 3	\$52.02	750	=	\$39,015.00	Estimated Hours Year 3
Year 4	\$53.06	750	=	\$39,795.30	Estimated Hours Year 4
Year 5	\$54.12	500	=	\$27,060.80	Estimated Hours Year 5
Total Direct Labor Cost with Escalation			=	\$257,871.10	
Direct Labor Subtotal before Escalation			=	\$250,000.00	
Estimated total of Direct Labor Salary Increase			=	\$7,871.10	Transfer to Page 1

NOTES:

1. This is not the only way to estimate salary increases. Other methods will be accepted if they clearly indicate the % increase, the # of years of the contract, and a breakdown of the labor to be performed each year.
2. An estimation that is based on direct labor multiplied by salary increase % multiplied by the # of years is not acceptable.
(i.e. \$250,000 x 2% x 5 yrs = \$25,000 is not an acceptable methodology)
3. This assumes that one year will be worked at the rate on the cost proposal before salary increases are granted.
4. Calculations for anticipated salary escalation must be provided.

SAMPLE COST PROPOSAL 1

Certification of Direct Costs:

I, the undersigned, certify to the best of my knowledge and belief that all direct costs identified on the cost proposal(s) in this contract are actual, reasonable, allowable, and allocable to the contract in accordance with the contract terms and the following requirements:

1. Generally Accepted Accounting Principles (GAAP)
2. Terms and conditions of the contract
3. [Title 23 United States Code Section 112](#) - Letting of Contracts
4. [48 Code of Federal Regulations Part 31](#) - Contract Cost Principles and Procedures
5. [23 Code of Federal Regulations Part 172](#) - Procurement, Management, and Administration of Engineering and Design Related Service
6. [48 Code of Federal Regulations Part 9904 - Cost Accounting Standards Board](#) (when applicable)

All costs must be applied consistently and fairly to all contracts. All documentation of compliance must be retained in the project files and be in compliance with applicable federal and state requirements. Costs that are noncompliant with the federal and state requirements are not eligible for reimbursement. Local governments are responsible for applying only cognizant agency approved or Caltrans accepted Indirect Cost Rate(s).

Prime Consultant or Subconsultant Certifying:

Name: _____ Title *: _____ \$ 0.00

Signature : _____ Date of Certification (mm/dd/yyyy): _____

Email: _____ Phone Number: _____

Address: _____

*An individual executive or financial officer of the consultant's or subconsultant's organization at a level no lower than a Vice President or a Chief Financial Officer, or equivalent, who has authority to represent the financial information utilized to establish the cost proposal for the contract.

List services the consultant is providing under the proposed contract:

Attachment C

California Levine Act Statement

Notice to Proposer DBE Information (Exhibit 10-I)

Consultant Proposal DBE Commitment (Exhibit 10-1)

Consultant Contract DBE Information (Exhibit 10-02)

DBE Information – Good Faith Effort (Exhibit 15-H)

Final Report – Utilization of DBEs (Exhibit 17-F)

Disclosure of Lobbying Activities (Exhibit 10-Q)

**Consultant in Management Support Role, Conflict of Interest and Confidentiality
Statement (Exhibit 10-U)**

California Levine Act Statement

California Government Code Section 84308, commonly referred to as the "Levine Act," prohibits any City of Sonora Councilmember from participating in any action related to a contract if he or she receives any political contributions totaling more than \$250 within the previous twelve months, and for three months following the date a final decision concerning the contract has been made, from the person or company awarded the contract. The Levine Act also requires a member of the City of Sonora City Council who has received such a contribution to disclose the contribution on the record of the proceeding.

City of Sonora Council Members are listed at:
<https://sonoraca.com/government/city-council/>

Proposers are responsible for accessing this link to review the names prior to answering the following questions.

1. Have you or your company, or any agent on behalf of you or your company, made any political contributions of more than \$250 to any City of Sonora Councilmember in the 12 months preceding the date of the submission of your proposals or the anticipated date of any Council action related to this contract?

☐ YES ☐ NO _____
If yes, please identify the Councilmember(s):

2. Do you or your company, or any agency on behalf of you or your company, anticipate or plan to make any political contribution of more than \$250 to any City of Sonora Councilmember in the three months following any Board action related to this contract?

☐ YES ☐ NO _____
If yes, please identify the Councilmember(s):

Answering yes to either of the two questions above does not preclude the City of Sonora from awarding a contract to your firm or any taking any subsequent action related to the contract. It does, however, preclude the identified Councilmembers(s) from participating in any actions related to this contract.

Date

Signature of authorized individual

Type or write name of authorized individual

Type or write name of company

EXHIBIT 10-I NOTICE TO PROPOSERS DBE INFORMATION

(Federally funded projects only)

The Agency has established a DBE goal for this Contract of 17.00%**1. TERMS AS USED IN THIS DOCUMENT**

- The term "Disadvantaged Business Enterprise" or "DBE" means a for-profit small business concern owned and controlled by a socially and economically disadvantaged person(s) as defined in Title 49, Code of Federal Regulations (CFR), Part 26.5.
- The term "Agreement" also means "Contract."
- Agency also means the local entity entering into this contract with the Contractor or Consultant.
- The term "Small Business" or "SB" is as defined in 49 CFR 26.65.

2. AUTHORITY AND RESPONSIBILITY

- A. DBEs and other small businesses are strongly encouraged to participate in the performance of Contracts financed in whole or in part with federal funds (See 49 CFR 26, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs"). The Consultant must ensure that DBEs and other small businesses have the opportunity to participate in the performance of the work that is the subject of this solicitation and should take all necessary and reasonable steps for this assurance. The proposer must not discriminate on the basis of race, color, national origin, or sex in the award and performance of subcontracts.
- B. Proposers are encouraged to use services offered by financial institutions owned and controlled by DBEs.

3. SUBMISSION OF DBE INFORMATION

If there is a DBE goal on the contract, Exhibit 10-O1 *Consultant Proposal DBE Commitment* must be included in the Proposal. In order for a proposer to be considered responsible and responsive, the proposer must make good faith efforts to meet the goal established for the contract. If the goal is not met, the proposer must document adequate good faith efforts. All DBE participation will be counted towards **meeting** the contract goal; therefore, all DBE participation shall be collected and reported.

Exhibit 10-O2 *Consultant Contract DBE Information* must be included in **best qualified consultant's executed consultant contract**. Even if no DBE participation will be reported, the successful proposer must execute and return the form.

4. DBE PARTICIPATION GENERAL INFORMATION

It is the proposer's responsibility to be fully informed regarding the requirements of 49 CFR, Part 26, and the Department's DBE program developed pursuant to the regulations. Particular attention is directed to the following:

- A. A DBE must be a small business firm defined pursuant to 13 CFR 121 and be certified through the California Unified Certification Program (CUCP).
- B. A certified DBE may participate as a prime consultant, subconsultant, joint venture partner, as a vendor of material or supplies, or as a trucking company.
- C. A DBE proposer not proposing as a joint venture with a non-DBE, will be required to document one or a combination of the following:
 - 1. The proposer is a DBE and will meet the goal by performing work with its own forces.
 - 2. The proposer will meet the goal through work performed by DBE subconsultants, suppliers or trucking companies.
 - 3. The proposer, prior to proposing, made adequate good faith efforts to meet the goal.

- D. A DBE joint venture partner must be responsible for specific contract items of work or clearly defined portions thereof. Responsibility means actually performing, managing, and supervising the work with its own forces. The DBE joint venture partner must share in the capital contribution, control, management, risks and profits of the joint venture commensurate with its ownership interest.
- E. A DBE must perform a commercially useful function pursuant to 49 CFR 26.55, that is, a DBE firm must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing and supervising the work.
- F. The proposer shall list only one subconsultant for each portion of work as defined in their proposal and all DBE subconsultants should be listed in the bid/cost proposal list of subconsultants.
- G. A prime consultant who is a certified DBE is eligible to claim all of the work in the Contract toward the DBE participation except that portion of the work to be performed by non-DBE subconsultants.

5. RESOURCES

- A. The CUCP database includes the certified DBEs from all certifying agencies participating in the CUCP. If you believe a firm is certified that cannot be located on the database, please contact the Caltrans Office of Certification toll free number 1-866-810-6346 for assistance.
- B. Access the CUCP database from the Department of Transportation, Office of Civil Rights [website](#)
 - 1. Click on the link titled Disadvantaged Business Enterprise;
 - 2. Click on Search for a DBE Firm link;
 - 3. Click on [Access to the DBE Query Form](#) located on the first line in the center of the page.

Searches can be performed by one or more criteria. Follow instructions on the screen.

6. MATERIALS OR SUPPLIES PURCHASED FROM DBES COUNT TOWARDS THE DBE GOAL UNDER THE FOLLOWING CONDITIONS:

- A. If the materials or supplies are obtained from a DBE manufacturer, count 100 percent of the cost of the materials or supplies. A DBE manufacturer is a firm that operates or maintains a factory, or establishment that produces on the premises the materials, supplies, articles, or equipment required under the Contract and of the general character described by the specifications.
- B. If the materials or supplies purchased from a DBE regular dealer, count 60 percent of the cost of the materials or supplies. A DBE regular dealer is a firm that owns, operates or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the Contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a DBE regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A person may be a DBE regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone or asphalt without owning, operating or maintaining a place of business provided in this section.
- C. If the person both owns and operates distribution equipment for the products, any supplementing of regular dealers' own distribution equipment shall be, by a long-term lease agreement and not an ad hoc or Agreement-by-Agreement basis. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not DBE regular dealers within the meaning of this section.
- D. Materials or supplies purchased from a DBE, which is neither a manufacturer nor a regular dealer, will be limited to the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on the job site, provided the fees are reasonable and not excessive as compared with fees charged for similar services.

EXHIBIT 10-01 CONSULTANT PROPOSAL DBE COMMITMENT

1. Local Agency: CITY OF SONORA 2. Contract DBE Goal: 17%
 3. Project Description: PROFESSIONAL ENGINEERING SERVICES
 4. Project Location: CITY OF SONORA
 5. Consultant's Name: _____ 6. Prime Certified DBE: ☐

7. Description of Work, Service, or Materials Supplied	8. DBE Certification Number	9. DBE Contact Information	10. DBE %

Local Agency to Complete this Section		11. TOTAL CLAIMED DBE PARTICIPATION	%
17. Local Agency Contract Number: _____ 18. Federal-Aid Project Number: _____ Consultant's Ranking after Evaluation: _____ Local Agency certifies that all DBE certifications are valid and information on this form is complete and accurate.			
21. Local Agency Representative's Signature	22. Date	IMPORTANT: Identify all DBE firms being claimed for credit, regardless of tier. Written confirmation of each listed DBE is required. 12. Preparer's Signature _____ 13. Date _____ 14. Preparer's Name _____ 15. Phone _____ 16. Preparer's Title _____	
23. Local Agency Representative's Name	24. Phone		
25. Local Agency Representative's Title			

DISTRIBUTION: Original – Included with consultant's proposal to local agency.

ADA Notice: For individuals with sensory disabilities, this document is available in alternate formats. For information call (916) 654-6410 or TDD (916) 654-3880 or write Records and Forms Management, 1120 N Street, MS-89, Sacramento, CA 95814.

INSTRUCTIONS – CONSULTANT PROPOSAL DBE COMMITMENT**CONSULTANT SECTION**

- 1. Local Agency** - Enter the name of the local or regional agency that is funding the contract.
- 2. Contract DBE Goal** - Enter the contract DBE goal percentage as it appears on the project advertisement.
- 3. Project Location** - Enter the project location as it appears on the project advertisement.
- 4. Project Description** - Enter the project description as it appears on the project advertisement (Bridge Rehab, Seismic Rehab, Overlay, Widening, etc.).
- 5. Consultant's Name** - Enter the consultant's firm name.
- 6. Prime Certified DBE** - Check box if prime contractor is a certified DBE.
- 7. Description of Work, Services, or Materials Supplied** - Enter description of work, services, or materials to be provided. Indicate all work to be performed by DBEs including work performed by the prime consultant's own forces, if the prime is a DBE. If 100% of the item is not to be performed or furnished by the DBE, describe the exact portion to be performed or furnished by the DBE. See LAPM Chapter 9 to determine how to count the participation of DBE firms.
- 8. DBE Certification Number** - Enter the DBE's Certification Identification Number. All DBEs must be certified on the date bids are opened.
- 9. DBE Contact Information** - Enter the name, address, and phone number of all DBE subcontracted consultants. Also, enter the prime consultant's name and phone number, if the prime is a DBE.
- 10. DBE %** - Percent participation of work to be performed or service provided by a DBE. Include the prime consultant if the prime is a DBE. See LAPM Chapter 9 for how to count full/partial participation.
- 11. Total Claimed DBE Participation %** - Enter the total DBE participation claimed. If the total % claimed is less than item "Contract DBE Goal," an adequately documented Good Faith Effort (GFE) is required (see Exhibit 15-H DBE Information - Good Faith Efforts of the LAPM).
- 12. Preparer's Signature** - The person completing the DBE commitment form on behalf of the consultant's firm must sign their name.
- 13. Date** - Enter the date the DBE commitment form is signed by the consultant's preparer.
- 14. Preparer's Name** - Enter the name of the person preparing and signing the consultant's DBE commitment form.
- 15. Phone** - Enter the area code and phone number of the person signing the consultant's DBE commitment form.
- 16. Preparer's Title** - Enter the position/title of the person signing the consultant's DBE commitment form.

LOCAL AGENCY SECTION

- 17. Local Agency Contract Number** - Enter the Local Agency contract number or identifier.
- 18. Federal-Aid Project Number** - Enter the Federal-Aid Project Number.
- 19. Proposed Contract Execution Date** - Enter the proposed contract execution date.
- 20. Consultant's Ranking after Evaluation** - Enter consultant's ranking after all submittals/consultants are evaluated. Use this as a quick comparison for evaluating most qualified consultant.
- 21. Local Agency Representative's Signature** - The person completing this section of the form for the Local Agency must sign their name to certify that the information in this and the Consultant Section of this form is complete and accurate.
- 22. Date** - Enter the date the DBE commitment form is signed by the Local Agency Representative.
- 23. Local Agency Representative's Name** - Enter the name of the Local Agency Representative certifying the consultant's DBE commitment form.
- 24. Phone** - Enter the area code and phone number of the person signing the consultant's DBE commitment form.
- 25. Local Agency Representative Title** - Enter the position/title of the Local Agency Representative certifying the consultant's DBE commitment form.

EXHIBIT 10-02 CONSULTANT CONTRACT DBE COMMITMENT

1. Local Agency: CITY OF SONORA 2. Contract DBE Goal: 17%
 3. Project Description: PROFESSIONAL ENGINEERING SERVICES
 4. Project Location: CITY OF SONORA
 5. Consultant's Name: _____ 6. Prime Certified DBE: ☐ 7. Total Contract Award Amount: _____
 8. Total Dollar Amount for ALL Subconsultants: _____ 9. Total Number of ALL Subconsultants: _____

10. Description of Work, Service, or Materials Supplied	11. DBE Certification Number	12. DBE Contact Information	13. DBE Dollar Amount
Local Agency to Complete this Section			
20. Local Agency Contract Number: _____ 21. Federal-Aid Project Number: _____ 22. Contract Execution Date: _____ Local Agency certifies that all DBE certifications are valid and information on this form is complete and accurate.			\$ _____ % _____
23. Local Agency Representative's Signature _____ 24. Date _____ 25. Local Agency Representative's Name _____ 26. Phone _____ 27. Local Agency Representative's Title _____			14. TOTAL CLAIMED DBE PARTICIPATION IMPORTANT: Identify all DBE firms being claimed for credit, regardless of tier. Written confirmation of each listed DBE is required. 15. Preparer's Signature _____ 16. Date _____ 17. Preparer's Name _____ 18. Phone _____ 19. Preparer's Title _____

DISTRIBUTION: 1. Original – Local Agency
 2. Copy – Caltrans District Local Assistance Engineer (DLAE). Failure to submit to DLAE within 30 days of contract execution may result in de-obligation of federal funds on contract.

ADA Notice: For individuals with sensory disabilities, this document is available in alternate formats. For information call (916) 654-6410 or TDD (916) 654-3880 or write Records and Forms Management, 1120 N Street, MS-89, Sacramento, CA 95814.

INSTRUCTIONS – CONSULTANT CONTRACT DBE COMMITMENT**CONSULTANT SECTION**

- 1. Local Agency** - Enter the name of the local or regional agency that is funding the contract.
- 2. Contract DBE Goal** - Enter the contract DBE goal percentage as it appears on the project advertisement.
- 3. Project Description** - Enter the project description as it appears on the project advertisement (Bridge Rehab, Seismic Rehab, Overlay, Widening, etc).
- 4. Project Location** - Enter the project location as it appears on the project advertisement.
- 5. Consultant's Name** - Enter the consultant's firm name.
- 6. Prime Certified DBE** - Check box if prime contractor is a certified DBE.
- 7. Total Contract Award Amount** - Enter the total contract award dollar amount for the prime consultant.
- 8. Total Dollar Amount for ALL Subconsultants** – Enter the total dollar amount for all subcontracted consultants. SUM = (DBEs + all Non-DBEs). Do not include the prime consultant information in this count.
- 9. Total number of ALL subconsultants** – Enter the total number of all subcontracted consultants. SUM = (DBEs + all Non-DBEs). Do not include the prime consultant information in this count.
- 10. Description of Work, Services, or Materials Supplied** - Enter description of work, services, or materials to be provided. Indicate all work to be performed by DBEs including work performed by the prime consultant's own forces, if the prime is a DBE. If 100% of the item is not to be performed or furnished by the DBE, describe the exact portion to be performed or furnished by the DBE. See LAPM Chapter 9 to determine how to count the participation of DBE firms.
- 11. DBE Certification Number** - Enter the DBE's Certification Identification Number. All DBEs must be certified on the date bids are opened.
- 12. DBE Contact Information** - Enter the name, address, and phone number of all DBE subcontracted consultants. Also, enter the prime consultant's name and phone number, if the prime is a DBE.
- 13. DBE Dollar Amount** - Enter the subcontracted dollar amount of the work to be performed or service to be provided. Include the prime consultant if the prime is a DBE. See LAPM Chapter 9 for how to count full/partial participation.
- 14. Total Claimed DBE Participation - \$:** Enter the total dollar amounts entered in the "DBE Dollar Amount" column. **%:** Enter the total DBE participation claimed ("Total Participation Dollars Claimed" divided by item "Total Contract Award Amount"). If the total % claimed is less than item "Contract DBE Goal," an adequately documented Good Faith Effort (GFE) is required (see Exhibit 15-H DBE Information - Good Faith Efforts of the LAPM).
- 15. Preparer's Signature** - The person completing the DBE commitment form on behalf of the consultant's firm must sign their name.
- 16. Date** - Enter the date the DBE commitment form is signed by the consultant's preparer.
- 17. Preparer's Name** - Enter the name of the person preparing and signing the consultant's DBE commitment form.
- 18. Phone** - Enter the area code and phone number of the person signing the consultant's DBE commitment form.
- 19. Preparer's Title** - Enter the position/title of the person signing the consultant's DBE commitment form.

LOCAL AGENCY SECTION

- 20. Local Agency Contract Number** - Enter the Local Agency contract number or identifier.
- 21. Federal-Aid Project Number** - Enter the Federal-Aid Project Number.
- 22. Contract Execution Date** - Enter the date the contract was executed.
- 23. Local Agency Representative's Signature** - The person completing this section of the form for the Local Agency must sign their name to certify that the information in this and the Consultant Section of this form is complete and accurate.
- 24. Date** - Enter the date the DBE commitment form is signed by the Local Agency Representative.
- 25. Local Agency Representative's Name** - Enter the name of the Local Agency Representative certifying the consultant's DBE commitment form.
- 26. Phone** - Enter the area code and phone number of the person signing the consultant's DBE commitment form.
- 27. Local Agency Representative Title** - Enter the position/title of the Local Agency Representative certifying the consultant's DBE commitment form.

EXHIBIT 15-H: PROPOSER/CONTRACTOR GOOD FAITH EFFORTS

Cost Proposal Due Date _____ PE/CE

Federal-aid Project No(s). _____ Bid Opening Date _____ CON

The _____ established a Disadvantaged Business Enterprise (DBE) goal of 0.00% for this contract. The information provided herein shows the required good faith efforts to meet or exceed the DBE contract goal.

Proposers or bidders submit the following information to document their good faith efforts within five (5) calendar days from cost proposal due date or bid opening. Proposers and bidders are recommended to submit the following information even if the Exhibit 10-O1: Consultant Proposal DBE Commitments or Exhibit 15-G: Construction Contract DBE Commitment indicate that the proposer or bidder has met the DBE goal. This form protects the proposer's or bidder's eligibility for award of the contract if the administering agency determines that the bidder failed to meet the goal for various reasons, e.g., a DBE firm was not certified at bid opening, or the bidder made a mathematical error.

The following items are listed in the Section entitled "Submission of DBE Commitment" of the Special Provisions, **please attach additional sheets as needed:**

- A. The names and dates of each publication in which a request for DBE participation for this project was placed by the bidder (please attach copies of advertisements or proofs of publication):

Publications

Dates of Advertisement

- B. The names and dates of written notices sent to certified DBEs soliciting bids for this project and the dates and methods used for following up initial solicitations to determine with certainty whether the DBEs were interested (please attach copies of solicitations, telephone records, fax confirmations, etc.):

Names of DBEs Solicited

Date of Initial Solicitation

Follow Up Methods and Dates

- C. The items of work made available to DBE firms including those unbundled contract work items into economically feasible units to facilitate DBE participation. It is the bidder's responsibility to demonstrate that sufficient work to facilitate DBE participation in order to meet or exceed the DBE contract goal.

Items of Work	Proposer or Bidder Normally Performs Item (Y/N)	Breakdown of Items	Amount (\$)	Percentage Of Contract
	Pick			0.00%
	Pick			0.00%
	Pick			0.00%
	Pick			0.00%

- D. The names, addresses and phone numbers of rejected DBE firms, the reasons for the bidder's rejection of the DBEs, the firms selected for that work (please attach copies of quotes from the firms involved), and the price difference for each DBE if the selected firm is not a DBE:

Names, addresses and phone numbers of rejected DBEs and the reasons for the bidder's rejection of the DBEs:

Names, addresses and phone numbers of firms selected for the work above:

- E. Efforts (e.g. in advertisements and solicitations) made to assist interested DBEs in obtaining information related to the plans, specifications and requirements for the work which was provided to DBEs:

- F. Efforts (e.g. in advertisements and solicitations) made to assist interested DBEs in obtaining bonding, lines of credit or insurance, necessary equipment, supplies, materials, or related assistance or services, excluding supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate:

- G. The names of agencies, organizations or groups contacted to provide assistance in contacting, recruiting and using DBE firms (please attach copies of requests to agencies and any responses received, i.e., lists, Internet page download, etc.):

Name of Agency/Organization

Method/Date of Contact

Results

- H. Any additional data to support a demonstration of good faith efforts:

EXHIBIT 17-F1: FINAL REPORT-UTILIZATION OF DISADVANTAGED BUSINESS ENTERPRISES (DBE) FOR A&E ON-CALL CONTRACTS

1. Local Agency Contract Number		2. Local Public Agency		3. Caltrans District		4. Contract Completion Date	
5. Consultant		6. Business Address		7. Orig. Contract Amount (\$)		8. Final Contract Amount (\$)	
9. Task Order Number	10. Federal Project Number	11. Task Order DBE Firm Name Cert. #		12. Task Order Description		13. Contract Payments (\$) Non-DBE DBE	
						14. Date Work Completed	15. Date of Final Payment
16. TOTAL for Task Orders:				\$0.00	\$0.00	\$0.00	

17. ORIGINAL DBE COMMITMENT AMOUNT:

List actual amount paid to all DBEs and non-DBEs for all task orders. If actual DBE utilization percentage (or item of work) was less than that approved at the time of award, provide comments in Explanation Box.

18. Explanation Box:

I CERTIFY THAT THE ABOVE INFORMATION IS COMPLETE AND CORRECT

19. Consultant Representative's Signature	20. Consultant Representative's Name	21. Phone	22. Date
I CERTIFY THAT THE CONTRACTING RECORDS OF THE DBE(S) HAS BEEN MONITORED			
23. Local Agency Representative's Signature	24. Local Agency Representative's Name	25. Phone	26. Date

DISTRIBUTION: Original – Local Agency, Copy – Caltrans District Local Assistance Engineer, include with Final Report of Expenditures.

EXHIBIT 10-Q DISCLOSURE OF LOBBYING ACTIVITIES

COMPLETE THIS FORM TO DISCLOSE LOBBYING ACTIVITIES PURSUANT TO 31 U.S.C. 1352

1. Type of Federal Action: <input type="checkbox"/> a. contract <input type="checkbox"/> b. grant <input type="checkbox"/> c. cooperative agreement <input type="checkbox"/> d. loan <input type="checkbox"/> e. loan guarantee <input type="checkbox"/> f. loan insurance	2. Status of Federal Action: <input type="checkbox"/> a. bid/offer/application <input type="checkbox"/> b. initial award <input type="checkbox"/> c. post-award	3. Report Type: <input type="checkbox"/> a. initial <input type="checkbox"/> b. material change For Material Change Only: year _____ quarter _____ date of last report _____
4. Name and Address of Reporting Entity <input type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier _____, if known Congressional District, if known _____	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime: Congressional District, if known _____	
6. Federal Department/Agency: _____	7. Federal Program Name/Description: CFDA Number, if applicable _____	
8. Federal Action Number, if known: _____	9. Award Amount, if known: _____	
10. Name and Address of Lobby Entity (If individual, last name, first name, MI) _____ (attach Continuation Sheet(s) if necessary)	11. Individuals Performing Services (including address if different from No. 10) (last name, first name, MI) _____ (attach Continuation Sheet(s) if necessary)	
12. Amount of Payment (check all that apply) \$ _____ <input type="checkbox"/> actual <input type="checkbox"/> planned	14. Type of Payment (check all that apply) <input type="checkbox"/> a. retainer <input type="checkbox"/> b. one-time fee <input type="checkbox"/> c. commission <input type="checkbox"/> d. contingent fee <input type="checkbox"/> e. deferred <input type="checkbox"/> f. other, specify _____	
13. Form of Payment (check all that apply): <input type="checkbox"/> a. cash <input type="checkbox"/> b. in-kind; specify: nature _____ Value _____		
15. Brief Description of Services Performed or to be performed and Date(s) of Service, including officer(s), employee(s), or member(s) contacted, for Payment Indicated in Item 12: (attach Continuation Sheet(s) if necessary)		
16. Continuation Sheet(s) attached: Yes <input type="checkbox"/> No <input type="checkbox"/>		
17. Information requested through this form is authorized by Title 31 U.S.C. Section 1352. This disclosure of lobbying reliance was placed by the tier above when his transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to Congress semiannually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.		
Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____		Authorized for Local Reproduction Standard Form - LLL

Standard Form LLL Rev. 04-28-06

Distribution: Orig- Local Agency Project Files

INSTRUCTIONS FOR COMPLETING EXHIBIT 10-Q DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime federal recipient at the initiation or receipt of covered federal action or a material change to previous filing pursuant to title 31 U.S.C. Section 1352. The filing of a form is required for such payment or agreement to make payment to lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress an officer or employee of Congress or an employee of a Member of Congress in connection with a covered federal action. Attach a continuation sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered federal action for which lobbying activity is or has been secured to influence, the outcome of a covered federal action.
2. Identify the status of the covered federal action.
3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last, previously submitted report by this reporting entity for this covered federal action.
4. Enter the full name, address, city, state, and zip code of the reporting entity. Include Congressional District if known. Check the appropriate classification of the reporting entity that designates if it is or expects to be a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the first tier. Subawards include but are not limited to: subcontracts, subgrants, and contract awards under grants.
5. If the organization filing the report in Item 4 checks "Subawardee" then enter the full name, address, city, state, and zip code of the prime federal recipient. Include Congressional District, if known.
6. Enter the name of the federal agency making the award or loan commitment. Include at least one organization level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the federal program name or description for the covered federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans and loan commitments.
8. Enter the most appropriate federal identifying number available for the federal action identification in item 1 (e.g., Request for Proposal (RFP) number, Invitation for Bid (IFB) number, grant announcement number, the contract grant or loan award number, the application/proposal control number assigned by the federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered federal action where there has been an award or loan commitment by the Federal agency, enter the federal amount of the award/loan commitments for the prime entity identified in item 4 or 5.
10. Enter the full name, address, city, state, and zip code of the lobbying entity engaged by the reporting entity identified in Item 4 to influence the covered federal action.
11. Enter the full names of the individual(s) performing services and include full address if different from 10 (a). Enter Last Name, First Name and Middle Initial (MI).
12. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (Item 4) to the lobbying entity (Item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
13. Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
14. Check all boxes that apply. If other, specify nature.
15. Provide a specific and detailed description of the services that the lobbyist has performed or will be expected to perform and the date(s) of any services rendered. Include all preparatory and related activity not just time spent in actual contact with federal officials. Identify the federal officer(s) or employee(s) contacted or the officer(s) employee(s) or Member(s) of Congress that were contacted.
16. Check whether or not a continuation sheet(s) is attached.
17. The certifying official shall sign and date the form, and print his/her name title and telephone number.

Public reporting burden for this collection of information is estimated to average 30-minutes per response, including time for reviewing instruction, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (03-48-0046), Washington, D.C. 20503. SF-LLL-Instructions Rev. 06-04

**EXHIBIT 10-U CONSULTANT IN MANAGEMENT SUPPORT ROLE CONFLICT OF INTEREST AND
CONFIDENTIALITY STATEMENT¹**

RFP/RFQ PROCUREMENT NUMBERS (if applicable): _____

PROJECT NAME (and FPN, if applicable)²: PROFESSIONAL ENGINEERING SERVICES _____

APPLICABILITY: To be filled out by local agency consultants in management support role.

☐ I am an employee of a consultant under contract to the local agency that is responsible for the procuring and administering of one or more consultant contracts containing either Federal or State funds.

☐ I am in a management position with the local agency, my title is listed below and I have attached my duty statement and scope of work.

☐ I hereby certify as follows:

1. I recuse myself from all potential conflicts of interest.
2. I will not directly or indirectly participate in, manage, or oversee any consultant selection procurement process in which the consulting firm of which I am employed is competing as a consultant or subconsultant.
3. I will not directly or indirectly influence any employee, staff member, or other individual participating in any consultant selection procurement process in which the consulting firm of which I am employed is as a consultant or subconsultant.
4. I will not directly or indirectly participate in, manage, or oversee any local agency contract that is with the consulting firm of which I am employed, regardless of whether the involvement of my employer in the contract is as a consultant or subconsultant. Among other things, this includes my not being involved in approving changes in the schedule, scope, deliverables or invoices.
5. I understand that if I am involved in any local agency contract that is with the consulting firm of which I am employed, in violation of 1. or 2. above, that local agency contract will no longer be eligible for Federal or State reimbursement because of my involvement.

☐ I certify that I have read and understand my responsibilities per **23 CFR 172.7(b)(5)**

☐ I fully understand that it is unlawful for a person to utilize any organization name (i.e. local agency) or auxiliary organization information, which is not a matter of public record, for personal gain.

¹ Each consultant staff working in a management support role shall complete a separate form.

² For on-call contracts or contracts for multiple projects, indicate accordingly.

☐ I have read and fully understand all of the above.

Date: _____ Signature: _____

Name: _____

Title: _____

Consultant Firm/Sole Proprietor: _____

**REVIEWED BY PUBLIC WORKS DIRECTOR OR AUTHORIZED LOCAL AGENCY
REPRESENTATIVE**

I have reviewed the foregoing "Conflict of Interest and Confidentiality Statement" and will ensure:

☐ That the foregoing named local agency consultant who is under contract and in a management support role with our local agency, abides by the foregoing terms and conditions;

☐ That should the foregoing named local agency consultant, who is under contract and in a management support role with our local agency, violate any of the foregoing terms and conditions, the Caltrans DLAE will be notified and such violation will be considered a breach of ethics and could be a basis for ineligibility of State or Federal project funds.

☐ The procedures followed to procure and execute the contract, between the local agency and the consulting firm of which I am employed, comply with all federal and state requirements. Also this contract has a specific date from _____ to _____.

Date: _____ Signature: _____

Name: _____

Title: _____

Department/Local Agency: _____

REVIEWED/CONCURRENCE BY FEDERAL HIGHWAYS

I have reviewed the foregoing "Conflict of Interest and Confidentiality Statement" and supervisor's statement.

☐ I concur that the consultant, who is under contract and in a management support role with the local agency, does not appear to present a conflict of interest. The local agency and the consultant should be considered eligible for federal reimbursement.

☐ I do not concur as I believe that the consultant, who is under contract and in a management support role with the local agency, does appear to present a conflict of interest.

Date: _____

Signature: _____

Name: _____

Position: _____

Distribution: 1) Copy to: DLAE for each Federal/State funded project
2) Copy to be returned to Local Agency by DLAE with FHWA approval